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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 586

XERO MAYFLOWER TRANSIT COMPANY,
APPELLANT,

vs.

GEORGIA PUBLIC SERVICE COMMISSION ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

SUPREME COURT OF THE UNITED STATES

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IN SUPERIOR COURT OF FULTON COUNTY

Petition

Georgia, Fulton County:

To the Superior Court of said County:

The petition of Aero Mayflower Transit Company, as plaintiff against the Georgia Public Service Commission, Jud P. Wilhoit, George L. Goode, Ben T. Huiet, J. B. Daniel, and Thomas K. Davis, who are members composing said commission, and Wm. B. Harrison, Comptroller General of the State of Georgia, as defendants, respectfully shows:

1. That plaintiff, Aero Mayflower Transit Company, is a corporation duly and legally incorporated under the laws of the State of Kentucky; that plaintiff maintains its principle office in the City of Indianapolis, State of Indiana and is a non-resident of the State of Georgia.

2. That the Georgia Public Service Commission is a body created by act of the General Assembly of the State of Georgia, vested with various regulatory powers over certain carriers including carriers by motor vehicle. That the domicile of the said Commission is fixed at the Capitol of the State of Georgia in Atlanta, Fulton County, Georgia, by virtue of Code Section 2625 of Park's Annotated Code of Georgia, 1910, and by Georgia Laws, 1922, page 143, Section 1, and said laws expressly authorize suit against said Commission to be brought in Fulton County, Georgia. That said Commission is by statute empowered to administer the provisions of the Motor Carrier Act of 1931, Georgia Laws Extraordinary Session, 1931, pp. 99 through 114, and of the Motor Common Carriers Act of 1931, Georgia Laws, 1931, pp. 99 through 213. Under said laws last referred to said Commission is exercising jurisdiction and regulatory powers over common and contract motor carriers for hire which are included in said Acts.

3. That defendant Jud P. Wilhoit is a resident of Warren County, Georgia; Geo. L. Goode is a resident of Frank-

lin County, Georgia; Ben T. Huiet is a resident of Fulton [fol. 2] County, Georgia; J. B. Daniel is a resident of Troup County, Georgia; and Thomas K. Davis is a resident of Thomas County, Georgia.

4. That defendant Wm. B. Harrison is Comptroller General of the State of Georgia and the residence of said defendant is in Fulton County, State of Georgia; that said defendant is under the Motor Carrier Act of 1931, Georgia Laws, Extraordinary Session 1931, pp. 99 through 114, Section 18 of said Act, empowered and authorized to collect the annual $25.00 registration fee prescribed for each vehicle in said Section.

5. That plaintiff is engaged solely in interstate commerce into, through and from the State of Georgia in the course of which it operates motor vehicles commonly called trucks and transports only household and office furniture for its patrons from states outside the State of Georgia to points in the State of Georgia, from points in the State to points in states outside of Georgia and from points outside of Georgia through Georgia to points in other states. That plaintiff operates many of its motor vehicles empty through the State of Georgia; that plaintiff owns all of the motor vehicles used in its business and its equipment consists of 50 vehicles of 3-ton rated net carrying capacity; 4 vehicles of 2-ton rated net carrying capacity and 16 vehicles of 1½-ton rated net carrying capacity. That all the motor vehicles of plaintiff are equipped with pneumatic tires.

6. That plaintiff is incorporated for the purpose of transporting for pay goods of such persons as it may desire to contract with and under its charter it is authorized to do that kind of business and plaintiff is engaged solely in interstate commerce as to its operations within the State of Georgia. Transportation is not offered by plaintiff to [fol. 3] the general public or to any other persons than those with whom it contracts and plaintiff is not a common carrier of goods but is a contract carrier for hire under the provisions of the Motor Carrier Act of 1931 as contained in Georgia Laws, Extraordinary Session 1931, pp. 99 through 114, and the Motor Common Carriers Acts of 1931, Georgia Laws, 1931, pp. 199 to 213 has no application to plaintiff but defendants contend that the latter Act is applicable to plaintiff.

7. That plaintiff has complied with all the provisions of the Motor Carrier Act of 1931, Georgia Laws, Extraordinary Session, 1931, pp. 99 through 114 including Section 30 thereof insofar as plaintiff has operated trucks in interstate commerce into, through or from the State of Georgia during 1933 and if plaintiff should be held to be a common carrier it has complied with all the provisions of the Motor Common Carriers Act of 1931, Georgia Laws 1931, pp. 199 to 213, and this suit is brought to enjoin and restrain defendants from collecting the registration fee of $25.00 for each vehicle of plaintiff which will be operated in interstate commerce into, through or from the State of Georgia during the balance of the year 1933 and successive years, and regardless of which law is held to be applicable to plaintiff.

8. That attached hereto as Exhibit A and made part hereof is a copy of the Motor Carrier Act of 1931, Georgia Laws, Extraordinary Session, 1931, pp. 99 to 114, and attached as Exhibit B is a copy of the Motor Common Carriers Act of 1931, Georgia Laws, 1931, pp. 199 to 213; that Section 18 of each law provides for an annual registration fee of $25.00 per vehicle; that under Section 18 of the Laws set out as Exhibit A hereto, the $25.00 registration fee per vehicle is payable to the Comptroller-General of the State of Georgia but in practice said fee has been and is being [fol. 4] collected by the Georgia Public Service Commission or the Comptroller-General of the State of Georgia, and under Section 18 of the Laws set out as Exhibit B hereto the $25.00 registration fee is payable to the Georgia Public Service Commission.

9. That the provisions of Section 18 of the Act set out as Exhibit A hereto as construed by the defendants to authorize or permit registration fees of $25.00 per vehicle to be exacted from plaintiff upon each vehicle operated by it in interstate commerce in Georgia, is unconstitutional, null and void as to plaintiff because in violation of the Constitution of the United States and of the Commerce Clause thereof contained in paragraph 3, Section 8 of Article 1 of the Constitution of the United States, reading as follows:

"Powers of Congress.—The Congress shall have power to: (3) Commerce. To regulate commerce with foreign nations and among the several states and with the Indian tribes."

for that:

(a) The fee authorized by said section, imposes an unjust, substantial, direct and unreasonable burden on interstate commerce and is more than an equivalent for the service rendered by the State authorities of Georgia in supervising and inspecting the interstate operations of plaintiff's motor vehicles;

(b) Said fee as contained in said section is a flat annual charge per vehicle, substantial in amount, and the same for motor vehicles plying the highways continuously in local service and for interstate motor vehicles only making, as do the motor vehicles of plaintiff, trips at infrequent intervals upon the highways of the State of Georgia and could not have been and was not designed as a measure of the cost of the supervision of interstate vehicles op- [fol. 5] erating over the state highways:

(c) Said fee as contained in said section is not predicated upon the need for or cost of regulation of vehicles operating in interstate commerce over the highways of the State of Georgia and the amount of the fee is not dependent upon such cost of, or need for, regulation. Said fee does not arise with an increase in mileage traveled or with the weight actually carried on the highways of the State. Said fee does not vary in accordance with the size of vehicle operated over the state highways in interstate commerce nor does fee vary in proportion to the use of the state highways;

(d) Said fee as contained in said section being a flat, annual charge of $25.00 for each vehicle, bears no reasonable relation to the actual cost of supervision and regulation of the operations of the trucks of plaintiff in interstate commerce through into and from Georgia but is the same for a motor vehicle operating empty or loaded in full or in part only and is the same regardless of the mileage traveled over the state highways or the time the vehicle operates in Georgia.

(e) Said fee as contained in said section being a flat, annual charge of $25.00 per vehicle, has no reasonable relation nor does it bear any relation to the cost of inspecting, controlling or supervising the interstate business conducted by plaintiff or the operations of motor vehicles owned and

operated by plaintiff in interstate commerce and such registration fee is a direct, substantial burden upon interstate commerce and the total whereof is in excess of any reasonable or just charge that might be levied by the State of Georgia to defray the expense of supervising, controlling or inspecting the interstate business of plaintiff or the operations of its motor vehicles which operates only at infrequent intervals in interstate commerce upon the state [fol. 6] highways of Georgia;

(f) The registration fee prescribed by Section 18 is not predicated upon or related to the use made or to be made of the highways of the State of Georgia by motor vehicles operating in interstate commerce and the amount of the registration fee is not dependent upon such use or upon the need for regulating or policing said vehicles;

(g) The registration fee prescribed by Section 18 does not pretend to be imposed as reimbursement or compensation for the use of the state highways but the funds arising from the registration fees are to be expended to enforce the police regulations prescribed in the Act of which Section 18 is part; and

(h) The registration fee prescribed by Section 18 is a flat, annual charge of $25.00 for each vehicle; said fee is not graduated according to the horsepower of the engine, the carrying capacity of the vehicle or the use made of the state highways by the vehicle. Said fee does not take into consideration the practical measure of size, speed or difficulty of control with respect to any vehicle and the charge of $25.00 per vehicle is an unreasonable charge to assess against the motor vehicles of plaintiff, none of which vehicles are in excess of 3-ton carrying capacity and none of which operate except at infrequent intervals over the state highways in Georgia."

10. That the provisions of Section 18 of the Act set out as Exhibit B hereto as construed by defendants to authorize or "permit registration fees of $25.00 per vehicle to be exacted from plaintiff upon each vehicle operated by it in interstate commerce in Georgia is unconstitutional, null and void as to plaintiff because in violation of the Constitution of the United States and of the commerce clause thereof contained in paragraph 3, Section 8, Article 1 of

the Constitution of the United States copied ante in para-
[fol. 7] graph 9 hereof, for the same reasons that Section 18 of the Act set out as Exhibit A hereto is alleged to be unconstitutional in paragraph 9 hereof, and plaintiff, by reference, adopts and repeats the grounds of unconstitutionality set out in paragraph 9 preceding and shows that the registration fee of $25.00 per vehicle prescribed under Section 18 of Exhibit B hereto is unconstitutional as to plaintiff for each of the reasons that the registration fee of $25.00 per vehicle prescribed under Section 18 of Exhibit A hereto is unconstitutional as to plaintiff.

11. That for the period from January through August, 1933, different motor vehicles of plaintiff have operated in interstate commerce within the State of Georgia; that some of the vehicles have been in said State only 1 time, that other vehicles have been within the state at intervals of several months and that no single vehicle of plaintiff has made more than 8 trips within the State of Georgia between January and August, both months inclusive, 1933; that no truck of plaintiff is operated regularly in Georgia in interstate commerce; that on the other hand, the vehicles of plaintiff have operated and will operate in Georgia only at infrequent intervals.

[fol. 8] 12. That in the operation of its interstate business for the balance of the year 1933, plaintiff will send into, through or from the State of Georgia in interstate commerce at least 12 motor vehicles which have not heretofore during the year 1933 operated within the State of Georgia; that defendants will collect registration fees of $25.00 upon each of said vehicles to be operated by plaintiff in interstate commerce within the State of Georgia for the balance of the year 1933, unless defendants are enjoined in this proceeding; that based on past experience and because of the satisfactory service rendered by plaintiff, it will operate in interstate commerce into, through and out of the State of Georgia during the year 1934 *into*, at least 60 different motor vehicles upon each of which vehicles defendants will collect a registration fee of $25.00 unless defendants are enjoined in this proceeding.

13. That many companies operate motor vehicles intrastate in Georgia which are of much larger capacity and which travel many times the mileage covered in Georgia

by the motor vehicles of plaintiff. As illustrations, Williams Transportation Company, with 7 vehicles qualified, traveled 85,652 miles the first half of 1933; Hansberger Motor Transportation Company with 10 vehicles qualified, traveled 338,138 miles in Georgia during the first half of 1933; Hoover Motor Express, with 11 vehicles qualified, traveled 129,932 miles in Georgia during the first half of 1933; Macon-Valdosta Motor Lines, with 2 vehicles qualified, traveled 20,781 miles in Georgia during the first half of 1933; Georgia Highway Express, with 22 vehicles qualified, traveled 214,557 miles in Georgia during the first half of 1933; and V. C. Ellington, Inc., with 19 vehicles qualified, traveled 223,425 miles in Georgia during the first half of 1933; whereas, plaintiff, with 42 vehicles qualified traveled only 19,674 miles in Georgia during the first half of 1933; [fol. 9] that such operations as those just described clearly show that there has not been, is not and could not be the same need for the regulation of the motor vehicles of plaintiff as for the regulation of other vehicles operating over much more mileage in Georgia than do the vehicles of plaintiff and the cost of the necessary regulation of the vehicles of plaintiff has not been, is not and will not be the same as the cost of the regulation of vehicles operated over much more mileage and for much more time than are the vehicles of plaintiff.

14. That the amount of registration and license fees collected under Sections 17 and 18 of Exhibits A and B attached hereto during the years 1931 and 1932 was much in excess of any sums that were reasonably required to defray the expense of administering the regulations under the attacked Acts. That is indicated by the fact that during 1931 and 1932 the total sum collected from registration and license fees under the attacked Acts amounted to $93,932.45 whereas the expense of administering the regulations of the Acts amounted to only $67,775.28. That is, during the years 1931 and 1932 the amount of $26,167.17 was collected through registration and license fees which amount was in excess of the sum needed to defray the expenses of administering the regulations under the Acts. On information and belief it is alleged that practically the same situation has existed in 1933 and that during said year and subsequent years the amounts collected and to be collected under Sections 18 of the attacked Acts have been and will be much

larger in amount than is reasonably required to defray the expense of administering the regulations under the Acts.

15. That the registration fee of $25.00 per vehicle prescribed in Section 18 of the Act attached as Exhibit A hereto and made part hereof, is unconstitutional, null and void as to plaintiff because in violation of the due process [fol. 10] and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States, particularly that part which reads:

"No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

for that:

"(a) Said registration fee prescribed by Section 18 bears no relation to the cost of regulating motor vehicle traffic upon the state highways; motor vehicles operating continuously in intrastate commerce over the highways of Georgia and of more carrying capacity than those of plaintiff are charged the same fee as plaintiff for more regulation and policing than is required for the vehicles of plaintiff and the registration fee is discriminatory against plaintiff and the result of an arbitrary classification;

(b) The registration fee prescribed by Section 18 could not have been designed as a reasonable measure of the cost of policing and regulating motor vehicles operating over the highways of the State of Georgia because the fee is a flat, annual charge per vehicle regardless of the size or extent of use of the vehicle upon the state highways and many intrastate vehicles ply the state highways of Georgia continuously while the vehicles operated by plaintiff only come into or pass through the State of Georgia at infrequent intervals and therefore the enforcement of said registration fee would discriminate against plaintiff and other interstate operators in favor of intrastate operators and subject plaintiff and other interstate operators to the payment of unjust, unreasonable and excessive regulation [fol. 11] charges; and

(c) That the registration fee prescribed by Section 18 sought to be imposed for inspecting, controlling and supervising the operations of the motor vehicles of plaintiff is discriminatory in that Section 2 of the Motor Carrier Act of 1931, attached as Exhibit A hereto, exempts from the provisions of the Act of which Section 18 is a part, the following operators:

"Motor vehicles engaged solely in transporting school children and teachers to and from public schools. And cars and trucks hauling people and farm products exclusively between points not having railroad facilities and not passing through or beyond towns having railroad facilities, where not more than 7 passengers and/or 1½ tons of freight are transported;"

and

"Motor vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, as long as the title remains in the producer;"

and such exemptions are an unreasonable and arbitrary discrimination against plaintiff and an arbitrary classification, prejudicial to plaintiff, and requiring plaintiff to pay an unjust, unreasonable and discriminatory portion of the total registration fees charged for the inspection, control and supervision of motor traffic and motor business in Georgia and such exemptions are in violation of the due process and equal protection clauses of the Fourteenth Amendment since there is the same need for the inspection, control and supervision of the business and trucks of common carriers, contract carriers and private carriers hauling [fol. 12] the excepted articles over the state highways of Georgia as for the inspection- control, and supervision of the business and vehicles of plaintiff which only operate at infrequent intervals over the same highways.

16. That the entire Motor Carrier Act of 1931 set out as Exhibit A hereto, including Section 18 thereof, is unconstitutional and unenforceable for the reason that Section 2 of

said Act exempts from the provisions of the Act including the requirement of bond or indemnity insurance in Sections 7 and 30 and payment of registration fee in Section 18, certain operators as shown in the preceding paragraph numbered 15, sub-paragraph (c) which said paragraph is by reference made part hereof. And such exemptions are in violation of the Constitution of the United States and of the commerce clause thereof contained in paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, copied heretofore, and said exemptions are in violation of the due process and equal protection of the law clauses of the Fourteenth Amendment to the Federal Constitution, copied heretofore, since the exemptions are an arbitrary and unreasonable classification, discriminating against plaintiff in favor of common carriers, contract carriers, private carriers and owners transporting the said excepted articles and burdens interstate commerce; Section 2 of said Act being unconstitutional renders the entire Act unconstitutional.

17. That defendants have in the past prevented plaintiff from using its motor vehicles in interstate commerce in Georgia and have caused said vehicles, including the loads therein contained belonging to the patrons of plaintiff, and coming into and passing through the State of Georgia, to be impounded without legal process and have forced plaintiff to pay the unconstitutional and void registration fees upon some of its vehicles in order for plaintiff to effect de- [fol. 13] livery of goods brought into the State of Georgia in interstate commerce, to secure the release of vehicles and their contents being operated through Georgia, and to prevent the drivers and operators of its vehicles from being arrested, prosecuted, fined and from having the penalties prescribed under the various Acts of Congress assessed against plaintiff and its drivers; that defendants threaten to continue to impound each motor vehicle of plaintiff that comes into or seeks to pass through the State of Georgia in interstate commerce unless the registration fees demanded by defendants are paid by plaintiff upon each vehicle threaten to prosecute plaintiff and each driver of a motor vehicle that plaintiff sends into or through Georgia in execution of its contract with shippers outside of Georgia and threaten to hold the contents of the motor vehicles as well as the motor vehicles themselves unless plaintiff submits

to the exaction of the unconstitutional registration fees; that in the event said threats of defendants are carried into effect, plaintiff will be forced to lose completely its interstate business into, through and out of the State of Georgia, which business has been built up and is being built up by plaintiff, and the right to conduct same is of the value of more than $10,000.00; that for defendants to carry their threats into effect will involve plaintiff and the drivers employed by it in a multiplicity of suits and prosecutions and the damages thus arising from the prosecutions and the detention of the trucks of plaintiff will result in irreparable loss and damage to plaintiff; that the seizure and impounding of the various motor vehicles of plaintiff, including the contents thereof, which belongs to its patrons, will subject plaintiff to loss, damage and inconvenience which will be irremediable and will interfere with the contract rights of plaintiff to the injury of its patrons.

[fol. 14] 18. That plaintiff seeks an injunction to protect its right to engage in interstate commerce into, through and out of the State of Georgia without interference with its motor vehicles on the part of defendants in seeking to enforce the unconstitutional and void provisions here under attack and to have the registration fees sought and threatened to be collected by defendants under the attacked law held to be unconstitutional and void as to plaintiff.

19. Plaintiff shows that it has no plain, adequate and complete remedy at law and that resort to equity to prevent the collection of the illegal registration fees, to prevent successive prosecutions and fines of plaintiff and imprisonment of its employees for nonpayment of the said unconstitutional fees and to prevent the imposition of the penalties prescribed under the Laws of Georgia is necessary and authorized for the following reasons:

(a) That the enforcement of the unconstitutional laws herein attacked would cause irreparable injury to and destroy the interstate business of plaintiff and prevent the further building up of such business; and

(b) That the registration fees, if paid, cannot be recovered under the laws of the State of Georgia by an action or proceeding at law and resort to the preventive

jurisdiction of equity is necessary for the protection of the rights and properties of plaintiffs; and

(c) That resort to equity is necessary in order to prevent successive prosecutions of plaintiff, its drivers and employees and the impounding of its vehicles by defendants in enforcing collection of the unconstitutional registration fees upon each motor vehicle of plaintiff that enters the State of Georgia, in all of which proceedings the issue of the unconstitutionality of the registration fees would be the same; and

[fol. 15] (d) That if plaintiff does not pay the registration fees demanded of it upon each vehicle that enters the State of Georgia in intrastate commerce, it will be subject to the criminal penalties for non-payment of the fees, the resulting injuries to its business will be irreparable and such injuries can be prevented only by resort to equity to prevent the threatened wrong; and

(e) That in enforcing the unconstitutional registration fees upon the motor vehicles of plaintiff, defendants have in the past and threaten in the future to impound the vehicles of plaintiff coming into or passing through the State of Georgia loaded with furniture owned by patrons of plaintiff and to prevent such vehicles from unloading, loading or from continuing on their interstate journey which illegal acts will result in delays in deliveries by plaintiff, inconvenience to its patrons, non-use of its equipment and the destruction of the interstate business of plaintiff.

Wherefore, plaintiff prays:

1. That a rule nisi issue directed to the defendants requiring them and each of them to show cause why the prayers of this petition should not be granted;

2. The defendants, their agents and representatives be temporarily and permanently restrained and enjoined from enforcing or seeking to take any steps whatever to enforce the provisions of Section 18 of the Motor Carrier Act of 1931 and Section 18 of the Motor Common Carriers Act of 1931, set out as Exhibits A and B of the petition, against plaintiff and from arresting the drivers and employees of plaintiff and from prosecuting plaintiff, its drivers and

employees for failure to pay the registration fees prescribed by the Acts aforementioned, and from interfering with the operations of plaintiff and from impounding its vehicles and their contents in any manner whatsoever;

[fol. 16] 3. That Section 18 of the Motor Carrier Act of 1931 set out as Exhibit A to the petition and Section 18 of the Motor Common Carriers Act of 1931, set out as Exhibit B to the petition, be by this Court declared to be unconstitutional, null and void and of no force or effect whatsoever in so far as plaintiff is concerned;

4. That the entire Motor Carrier Act of 1931, set out as Exhibit A to the petition, be held to be unconstitutional, null and void because of the exemptions therein;

5. That the Motor Common Carriers Act of 1931 be held to be inapplicable to plaintiff, a contract carrier for hire;

6. That plaintiff have such other and further relief as under the facts it may appear to the court that it is entitled to receive and in the meantime that the defendants be temporarily restrained and enjoined as above prayed;

7. That process may issue (and second originals as to the defendants who are not resident of Fulton County) requiring each and all of said defendants to be and appear at the next term of this court to answer this petition, though not under oath, answer under oath and discovery being expressly waived; and

8. That other parties who may so desire be allowed to intervene in this proceeding.

Watkins, Asbill & Watkins, Attorneys for Plaintiff.

[fol. 17] EXHIBIT "A" TO PETITION

Georgia "Motor Carrier Act of 1931"

Issued from the Office of the Georgia Public Service Commission

James A. Perry, Chairman; Perry T. Knight, Vice-Chairman; Walter R. McDonald, Albert J. Woodruff, Cal-

vin W. Parker. Robt. N. Springfield, Secretary. E. M. Price, Rate Expert.

Atlanta, Ga., March 31, 1931.

[fol. 18] An Act

To provide the conditions and regulations under which motor carriers for hire are permitted to operate over the highways of this State; to regulate the business of transporting for hire persons and property by motor vehicles on the public highways of this State; to define Motor Carriers and to subject them to the jurisdiction and regulatory powers of the Georgia Public Service Commission; to prohibit the operation of vehicles by Motor Carriers unless they obtain a certificate of public necessity and convenience and to prescribe the conditions on which such certificates shall be issued and continued in force and the fees to be paid therefor; to authorize the Commission to prescribe just and reasonable rules, rates, fares and charges of motor carriers and the form, filing and publication of tariffs therefor; to provide rules and regulations for contract or private carriers for hire, to provide that the provisions of this Act shall extend to such contract or private carriers for hire, to define casual or occasional carriers; to prohibit motor carriers from charging or receiving greater, less or different compensation fom that prescribed; to prevent unjust discriminations; to make provision with reference to proceedings before the Commission and review of its orders; to make provisions concerning the carrying of white and colored passengers, the carrying of baggage, discontinuance of operations; to give the Commission power to require Motor Carriers to locate, erect, use or lease depots, to fix schedules, or the number, kind or character of equipment used; to authorize railroad companies to operate on the Public Highways as Motor Carriers and to own stock in corporations organized or operating as Motor Carriers; to fix the venue of suits against Motor Carriers; to prescribe registration and license fees to be paid by Motor Carriers; to prohibit any political sub-division of the State from imposing registration or license fees on any Motor Carrier licensed under this Act; to prescribe punishment for violations of this Act and of the orders of

the Commission; to authorize the Commission to employ such persons as may be necessary for the enforcement of this Act; to require interstate Motor Carriers to register with the Commission the routes and vehicles used by them in this State; to require them to give certain bonds or indemnity insurance; Pay an annual license fee; and to appoint an Attorney in Fact for service of suits against them for personal injuries; and to fix the venue [fol. 19] of such suits; to authorize injunction suits against Motor Carriers who operate without certificate or after certificate is revoked; to repeal the Act of the General Assembly approved August 29th, 1929, designated by Section 1 of such Act as "Motor Carrier Act of 1929"; to make provision for and to prescribe certain rules and regulations for the safety of passengers, members of the public and employees; to require Motor Carriers to keep records and to prescribe the books and forms of Account to be kept by them and require that same be kept open to inspection; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same.

Section 1.

This Act may be cited as "Motor Carrier Act of 1931." The provisions of this Act are intended to state the conditions and regulations under which motor carriers for hire, whether or not common carriers, are permitted to operate over the highways of this State.

Section 2

When used in this Act, unless expressly stated otherwise—

(a) The term "person" shall include an individual, a firm, co-partnership, corporation, company, an association or a joint stock association.

(b) The term "Commission" means the Georgia Public Service Commission.

(c) The term "Motor Carrier" means every person owning, controlling, operating or managing any motor propelled vehicle, (and the lessees, or receivers or trustees

thereof, appointed by any court whatsoever) used in the business of transporting persons or property for hire over any public highway in this State and not operated exclusively within the incorporated limits of any city or town; provided that the term "Motor Carrier" as used in this Act shall not include and this Act shall not apply to:

(1) Motor vehicles engaged solely in transporting school children and teachers to and from public schools. And cars and trucks hauling people, and farm products exclusively between points not having railroad facilities, and not passing through or beyond municipalities having railroad facilities where not more than seven passengers and/or one and one-half tons of freight are transported.

(2) Motor vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 [fol. 20] pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not so long as the title remains in the producer. And the word "producer" shall include a landlord where the relation of landlord and tenant or landlord and cropper are involved. The phrase "agricultural products" as used in this Act shall include fruit, livestock, meats, fertilizer, wood, lumber, cotton, and naval stores, household goods and supplies transported to farms for farm purposes and/or other usual farm and dairy supplies, and including products of groves and/or orchards, and also poultry and eggs, and also fish and oysters, and all country merchants in rural districts who handle poultry and farm products in pursuance to their own business and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacture.

(3) Taxicabs, or motor trucks of baggage transfer companies, and motor trucks of railway express companies, and/or motor trucks engaged exclusively in local draying, which are operated principally within the incorporated limits of cities or towns but which may in the prosecution of their regular business occasionally go beyond the limits of the city or town in which they operate, and which do not

operate between such city or town and fixed termini outside of such city or town limits.

(4) Hotel passenger or baggage motor vehicles when used exclusively for its patrons and employees.

(5) Motor trucks of railway companies which perform a pick-up and delivery service in connection with their freight train service, between their freight terminals and points not more than five miles distance, when either or both the freight terminal or such points are outside the limits of an incorporated city or town.

(6) R. F. D. carriers or star route carriers engaged in carrying the U. S. Mail and who are permitted to carry passengers, not exceeding five, while actually engaged in transporting U. S. Mail over such route.

(7) Motor vehicles owned and operated exclusively by the United States, this State, or any sub-division thereof.

(d) The term "Public Highway" means every public street, road highway, or thoroughfare of any kind in this State used by the public.

(e) The term "Certificate" means a Certificate of Public Convenience and Necessity issued under this Act.

Section 3

The Commission is hereby vested with power to regulate [fol. 21] the business of any person engaged in the transportation of persons or property either or both, for hire, by motor vehicle on any public highway in this State.

Section 4

(a) No motor carrier shall, after this Act goes into effect, operated without first obtaining from the Commission, after hearing under the provisions of this Act, a certificate of Public Convenience and Necessity pursuant to findings to the effect that the public interest requires such operation.

(b) The Commission may issue the Certificate prayed for or issue it for the partial exercise of the privilege sought; and may attach to the exercise of the rights

granted by such certificate such terms and conditions as in its judgment the public may require.

(c) All certificates of Public Convenience and Necessity granted under the Motor Carrier Act of 1929 shall continue in force and effect until revoked by the Commission or surrendered by the holders.

(d) The Commission may at any time, after notice and opportunity to be heard, suspend, revoke, alter or amend any certificate issued under this Act or the Motor Carrier Act of 1929, if it shall be made to appear that the holder of the certificate has wilfully violated or refused to observe any of the orders, rules or regulations prescribed by the Commission or any provisions of this Act, or any other law of this State regulating and/or taxing motor vehicles, or if, in the opinion of the Commission, the holder of such certificate was not furnishing adequate service or it is no longer compatible with the public interest to continue said certificate in force, or the continuance of said certificate is not in conformity with the spirit and purpose of this Act.

(e) Any such certificate may be transferred or hypothecated upon application to and approval by the commission and not otherwise. Provided no transfer hereunder shall be permitted so as to destroy competition or create monopoly.

(f) Nothing in this Act is to be construed as requiring a private carrier to become a common carrier.

(g) In determining whether such certificate of Public Convenience and Necessity shall be granted, the Commission, among other things, must consider the following:

(1) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs;

(2) The volume of existing traffic over such route and whether such traffic and that reasonably to be anticipated in the future can support already existing transportation agencies and also the applicant;

(3) Financial ability of the applicant to furnish adequate, continuous and uninterrupted service for the year round;

[fol. 22] (4) The effect, expense and burden on the public highways, including bridges and on the traffic, both private and common carrier, thereon;

(5) The effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate will or may seriously impair essential existing public service.

Section 5

The Commission shall adopt rules prescribing the manner and form in which motor carriers shall apply for Certificates required by this Section. Among the rules adopted there shall be rules as follows:

(a) Application shall be in writing, under oath.

(b) Shall contain full information concerning the ownership, financial condition, equipment to be used including the size, weight and capacity of each vehicle to be used, and physical property of the applicant.

(c) The complete route or routes over which the applicant desires to operate.

(d) The proposed time schedule.

(e) Applicant agrees to observe all rates, schedule or schedules and classifications of the equipment, as prescribed by the Commission.

(f) All existing transportation in the territory proposed to be served and wherein the public needs additional service, and why.

(g) Any such other or additional information as the Commission may order or require.

Section 6

The Commission, upon the filing of a petition for certificate of Convenience and Necessity, shall fix a time and place for hearing thereon. The Commission shall cause a copy of the petition and notice of hearing to be served at least twenty days before the hearing upon every common carrier of passengers or property for hire, including railroads operating and rendering service in the territory proposed to be served by the petitioner or applicant for a Cer-

tificate of Convenience and Necessity to operate in the same territory, and upon the State Highway Commission.

Section 7

No certificate shall be issued or continued in operation unless the holder thereof shall give bond with adequate security, for the protection in case of passenger vehicles, of the passengers and baggage carried, and of the public, against injury proximately caused by the negligence of such [fol. 23] motor carrier, its servants or agents, and in cases of vehicles transporting freight, to secure the owner or person entitled to recover therefor against loss or damage to such freight for which the motor carrier may be legally liable, and for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents.

The Commission shall approve, determine and fix the amount of such bonds, and shall prescribe the provisions and limitations thereof, and such bonds shall be for the benefit of and subject to suit or action thereon by any person who shall sustain actionable injury or loss protected thereby. The Commission may, in its discretion, allow the holder of such certificate to file in lieu of such bond a policy of indemnity insurance in some indemnity insurance company authorized to do business in the State of Georgia, which policy must substantially conform to all of the provisions hereof relating to bonds and must likewise be approved by the Commission. The Commission shall have power to permit self-insurance in lieu of a bond or policy of indemnity insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

Section 8

The Commission shall prescribe just and reasonable rates, fares and charges for transportation by motor carriers, of passengers, baggage and property and for all services rendered by motor carriers in connection therewith, and the tariffs therefor shall be in such form, and shall be filed and published in such manner and on such notice as the Commission may prescribe and shall be subject to change on such notice and in such manner as the Commission may prescribe. The provisions of this Section and the succeeding Section 9 shall apply to motor carriers

who do not pursue the business of a common carrier, but operate as contract or private carriers for hire and the rates, fares and charges prescribed for such contract or private carriers shall be the same as those prescribed for common carriers by motor vehicle, and no such private or contract carrier shall contract to carry at a greater or less rate than prescribed by the Commission and all such contracts are hereby declared unlawful. Copies of all contracts of private or contract carriers with their patrons shall be filed with the Commission. All other provisions of this Act, except where expressly stated otherwise shall extend to and apply to such contract or private carriers. Provided that casual or occasional carriers shall not be construed to come under the provisions of Sections 8 or 9 of this Act, and the Public Service Commission shall define [fol. 24] what are casual or occasional carriers.

Section 9

No motor carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of passengers and property or for any service rendered in connection therewith than the rates, fares and charges prescribed or approved by order of the Commission; nor shall any motor carrier unjustly discriminate against any person in its rates, fares, charges of service, but the Commission may prescribe by general order to what persons motor carriers may issue passes or free transportation, and may prescribe upon the same terms and conditions as now apply to railroad carriers reduced rates for special occasions; to fix and prescribe rules and schedules.

Section 10

Motor Carriers may, as an incident to their business, carry mail, parcels and packages under such rules and regulations as may be prescribed by the Commission.

Section 11

Motor carriers may confine themselves to carrying either white or colored passengers, or they may provide different motor vehicles for carrying white and colored passengers; and they may carry white and colored passengers in the same vehicle but only under such conditions of separation of the races as the Commission may prescribe.

Section 12

Motor carriers shall not be compelled to carry baggage of passengers, except hand bagage; the character, amount and size of which the motor carrier may limit by its rules and regulations, subject to the approval of the Commission, and the Commission may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor carrier shall elect to carry the personal baggage of passengers (other than hand baggage), the Commission shall prescribe just and reasonable rates therefor, and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor.

Section 13

Action may be maintained against any corporation operating under this Act in any county in this State where any accident or other liability arises and where there is no agent of such corporation against whom suit is brought in the County where the right of action arises; service in such case may be perfected by serving the party defendant and/or an agent thereof with a second original where such defendant and/or agent thereof may be located.

[fol. 25]

Section 14

A motor carrier shall have the right to discontinue its whole service on any route upon thirty days' published notice to be prescribed by the Commission and thereupon its certificate therefor shall be cancelled. A motor carrier shall have the right to discontinue any part of its service on any route upon thirty days' published notice, subject, however, to the right of the Commission to withdraw its Certificate for such route, if, in the opinion of the Commission, such diminished service is not adequate or any longer compatible with the public interest.

Section 15

Railroad companies operating in this State are hereby authorized to operate motor vehicles for hire upon highways, provided they obtain from the Commission a certificate under this Act, and provided further that they shall be as to said motor vehicles motor carriers under this Act

and subject to all the provisions of this Act; and railroad companies operating in this State are also authorized to own the whole or any part of the capital stock of a corporation or corporations organized or operating as a motor carrier. But no railroad company, nor any company whose stock is owned by a railroad company shall be granted a Certificate of Public Convenience and Necessity without proof such as would be required by an independent motor carrier.

Section 16

In all respects in which the Commission has power and authority under this Act, proceedings may be instituted, complaints made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, and any final order may be reviewed in any court of competent jurisdiction of this State under the conditions and subject to the limitations as now prescribed by law as relates to the Georgia Public Service Commission.

Section 17

A fee of thirty-five ($35.00) dollars shall be charged for the issue of every certificate of convenience and necessity, and a fee of seven and 50/100 ($7.50) dollars for the transfer of a certificate, which shall be paid to the Commission when the Commission has approved the application for the certificate and no certificate shall issue until the said fee of $35.00 has been paid.

Section 18

Every motor carrier shall as soon as a certificate is issued and annually on or before each succeeding January first as long as such certificate remains in force, make application to the Commission for registration and license of all motor vehicles to be operated under said certificate and upon payment of a fee of $25.00 for each vehicle to the [fol. 26] Comptroller-General shall be entitled to register the same and receive a license therefor.

The sum or sums derived herein from the issuance and transfer of Certificates of Convenience and Necessity by the Comptroller-General, shall be paid to the State Treasurer who shall keep such sums thus paid to him in a separate fund to be known as the Motor Vehicle Fund. From

such funds thus derived the State Treasurer shall, upon proper warrant from the Governor, pay all the expenses and salaries of every character as due and provided herein. Such sum or sums as may be left after such salaries and supervisory expenses have been paid, as may remain unexpended on the first day of January each year, shall be paid to the State Highway Department for use in maintenance and repair of the highways, as in the discretion of the Highway Board may be directed.

Section 19

(a) Motor carriers shall keep records upon forms prescribed by the Commission of all motor vehicles and trailers used during the current month. On or before the tenth of the month following they shall file under oath with the Commission upon forms prescribed by the Commission summaries of their daily records which will show the capacity of their motor vehicles and trailers and the miles operated by each motor vehicle and trailer during the preceding month, together with such other information as the Commission may require. Such daily records shall be filed and preserved by the Commission for a period of at least two years.

(b) The Commission shall prescribe the books and the forms of account to be kept by the holders of the certificates which shall be preserved for such reasonable time as may be prescribed by the Commission. The books and records of every certificate holder shall be at all times open to the inspection of said Commission or any agent appointed by it for such purpose. The Commission shall have the power to cancel any certificate of necessity and convenience theretofore issued to any motor carrier for failure to keep the books and records as prescribed by the Commission or for failure to comply with any lawful rule or regulation of the Commission, but no certificate issued by the Commission hereunder shall be revoked upon such grounds without notice and hearing to such motor carrier under such rules and regulations as the Commission may prescribe therefor. The Commission shall have the power to examine the books and records of all motor carriers to whom it has granted certificates to operate hereunder and [fol. 27] to examine under oath the officers and agents of any motor carrier with respect thereto.

Section 20

(a) Every officer, agent or employee of any corporation and every person who violates or fails to comply with the provisions of this Act (except the provisions relating to the payment of fees or taxes) or any order, rule or regulation of the Commission, or who procures, aids or abets therein, is guilty of a misdemeanor, and upon conviction shall be punished as for a misdemeanor.

(b) Every officer, agent or employee of any corporation and every other person who knowingly accepts or receives any rebate or drawback from the rates, fares or charges established or approved by the Commission for motor carriers or who procures, aids or abets therein or who uses or accepts from a motor carrier any free pass or free transportation, not authorized or permitted by law or by the orders, rules or regulations of the Commission, or who procures, aids or abets therein, shall be guilty of a misdemeanor and upon conviction shall be punished as for a misdemeanor.

(c) The possession of goods, wares or merchandise loaded on a motor vehicle consigned to any person, firm or corporation, being transported or having been transported over the highways in Georgia, without the authority of a certificate for so doing having been issued by the Georgia Public Service Commission, shall be prima facie evidence that such one so transporting such goods, wares, or merchandise is with intent and in violation of the law regulating the transportation of persons and property over the highways in Georgia.

Section 21

The Commission is hereby authorized to employ such persons as may be necessary in the discretion of the Commission, for the proper enforcement of the provisions of this Act, the salaries for such employees to be fixed by the Commission. The traveling expenses of the Commission and its employees incurred in the performance of this Act shall be paid as similar expenses of the Commission, out of the Motor Vehicle fund.

Section 22

Each Section of this Act and each part thereof is hereby declared to be independent sections and parts of sections,

and the holding of any section or any part of a section to be void or ineffective for any cause shall not affect any other section of this Act or part of a section.

Section 23

This Act shall be cumulative to other laws regulating the use of motor vehicles on the highways.

[fol. 28] Section 24

The Commission shall have the authority to promulgate rules designed to promote safety, and any such safety rules promulgated or deemed necessary by such Commission shall include the following:

(a) Every motor unit and all parts thereof shall be maintained in a safe condition at all times. And the lights and brakes and equipment shall meet such safety requirements as the Commission shall from time to time promulgate.

(b) Every driver employed by a motor carrier shall be at least eighteen years of age of temperate habits and good moral character, and shall be fully competent to operate the motor vehicle under his charge.

(c) Accidents arising from or in connection with the operation of motor carriers shall be reported to the Commission in such detail and in such manner as the Commission may require.

(d) The Commission shall require and every motor carrier shall have attached to each unit or vehicle such distinctive marking or tags as shall be adopted by the Commission.

Section 25

It shall be unlawful for any motor carrier, its officers or agents, subject to this Act to require or permit any driver to be or remain on duty for a longer period than ten consecutive hours, and whenever any such driver shall have been continuously on duty for ten hours he shall be relieved and not required or permitted to go on duty until he has had at least ten consecutive hours off duty, except that in cases of unforseen emergency a driver may remain on duty not in excess of twelve hours or for such time as will enable him to complete his regular run.

Section 26

The Commission is hereby authorized to adopt, after reasonable notice and hearing thereon, such rules and orders as it may deem necessary in the enforcement of the provisions of this Act. Such rules and orders so approved by the Commission shall have the same dignity and standing as if such rules and orders were specifically provided in this Act.

Section 27

When a petition for a Certificate of Public Convenience and Necessity has been in whole or in part denied by the Commission or has been granted by the Commission and the order of the Commission granting same has been quashed or set aside by a court of competent jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the Commission within [fol. 29] three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order.

Section 28

Nothing in this or any previous Act of the General Assembly shall ever be construed to vest in the owner or holder or assignee of any Certificate of Public Convenience and Necessity any vested right to use the Public Roads of this State and shall never be construed to give to any Motor Carrier for hire any perpetual franchise over such Public Roads. Certificates of Public Convenience and Necessity issued under the provisions of this Act or under the provisions of the Motor Carrier Act of 1929 shall, unless sooner revoked under the provisions of this Act expire at the end of seven years from the date of the issuance of same but may be renewed by the Public Service Commission with or without hearing, in their discretion.

Section 29

If any portion and/or section of this Act should be held unconstitutional or inoperative by any court, the remaining portions and/or Sections shall not be invalidated thereby, but shall remain and continue in full force and effect.

Section 30

Motor Carriers who conduct solely an interstate business on or over the highways of this State, shall register with the Commission the routes over which they operate, the number of motor vehicles and trailers operated by them and the character and capacity of such vehicles, the forms for such registration to be prescribed by the Commission; and such motor carriers shall give the bond or indemnity insurance prescribed by Section 7, of this Act, but limited to the protection of the public against injuries caused by the negligence of motor carriers; and such motor carriers shall pay annually the license fee prescribed by Section 19, of this Act, for each motor vehicle operated by it over the highways of this State, and each motor carrier who is not a resident of this State shall appoint an attorney in fact and file such appointment with the Commission, on whom process may be served in any suit instituted against such motor carrier in this State, for injuries to any person or property in this State; which suit shall be instituted in the county in which the injury occurs and if the said attorney in fact does not reside in such county then he may be served with a second original in the county in which he resides.

Section 31

Any motor carrier who operates on the highways of this State without a Certificate of Public Convenience and Necessity, or after such certificate is cancelled, may be en-
[fol. 30] joined by the courts of this State from operating on the highways of this State at the suit of the Commission, or at the suit of a motor carrier or rail carrier which competes with it, or any individual.

Section 32

Be it enacted that the Act of the General Assembly approved August 29th, 1929, designate and allow to be cited as "Motor Carrier Act of 1929" by Section 1 of said Act be and the same is hereby repealed, except that all persons who have violated said Act or the rules of the Commission passed in pursuance thereof prior to its repeal, shall be subject to the penalties thereof; and all rates, fares and charges, schedules prescribed thereunder shall remain in effect until changed by the Commission and all license taxes

due and unpaid thereunder shall be paid; and the repeal hereby of said Act shall not affect any bond or indemnity insurance given under Section 5 of said Motor Carrier Act of 1929.

Section 33

All laws and parts of laws which may be in conflict with this Act be and the same are hereby repealed.

Approved March 31, 1931.

[fol. 31] Fixing Load, Height, Width and Speed of Motor Vehicles.

An Act

To provide for the regulation of motor vehicles for hire over the highways of Georgia; to prescribe penalties for violations of this Act and regulations made hereunder; and for other purposes.

Section 1

Be it enacted by the General Assembly of the State of Georgia as follows:

The word "motor-vehicle," as used herein, shall include and be deemed to mean any vehicle engaged in the carriage for hire of goods or passengers or both, and not propelled solely by muscular power, but does not include such vehicles as are customarily operated upon rail tracks.

Section 2

There shall not be operated on any highway of this State any such motor vehicle whose width, including load and any frame, part or body used thereon or in connection therewith, is at its maximum width greater than 96 inches, or whose height, including load, and any frame, part or body used thereon or in connection therewith is at maximum height greater than 12½ feet, or whose length, including load, and any frame part of body used thereon or in connection therewith, is at maximum length greater than 35 feet; and no combination of such vehicles coupled together shall be so operated whose total length, including load and any frame, part or body, shall, in the aggregate, be greater than 45 feet. No such motor vehicle or combination of vehicles the weight

of whose load exceeds 12,500 lbs. for each unit having two or more axles, and 6,350 lbs. where such unit has only one axle, and no motor vehicle or combination of vehicles exceeding the length herein provided for shall operate upon the public highways of the State without special written permission of the Public Service Commission, given for some temporary and special purpose.

Nothing herein shall be construed to prohibit the hauling of timber, lumber and piling by motor trucks, regardless of length or weight from the forest where cut to the owner's place of business, plantation or residence within the County where originally cut or the adjoining County.

(a) Every vehicle using the highways of this State at night shall be equipped with a lamp or lamps clearly visible for a distance of not less than 100 ft. from the front and rear thereof.

[fol. 32] Section 3

No such motor vehicle or combination of vehicles, whose total length, including load and parts, equals or exceeds 25 feet, or whose gross weight, including load and parts, equals or exceeds six thousand pounds, shall be operated on the public highways of the State at a speed in excess of 33 miles per hour; and no other motor vehicle for hire shall be operated on the highways at a rate of speed greater than 40 miles per hour. Motor vehicles of not exceeding two tons in weight, including load, engaged exclusively in the carriage of daily newspapers and passenger vehicles weighing not over 5,000 pounds including load may be operated at a rate of speed not exceeding 40 miles per hour.

Section 4

No such motor vehicle shall be operated over the highways of this State with a trailer attached unless such trailer is so attached to the motor vehicle drawing it as to prevent the wheels of such trailer from being deflected more than six inches from the path of the towing vehicle's wheels, except in turning curves in the highway, or in making turns in its operation.

Section 5

No such motor vehicle shall be operated over the highways of this State unless it is equipped with a mirror of

such design and character that it will enable the driver or operator of the motor vehicle to see the road in the rear of the motor vehicle and/or trailer attached thereto.

Section 6

The Public Service Commission shall have full power and authority, in its discretion, to require that a mechanical device for controlling and regulating the speed of trucks and buses coming under their jurisdiction be used; and further to promulgate rules and regulations, in its discretion, for the enforcement of these requirements. Said Commission shall have the power and authority to enforce the provisions of this section and the rules and regulations promulgated by it under this section. All drivers of passenger carrying buses or trucks, operated under the jurisdiction of the Public Service Commission of Georgia, shall be required to stand a mental and physical examination with reference to said drivers' ability and competency to operate such vehicle with respect to safety of passengers and public; under rules and regulations to be prescribed by the Public Service Commission; and any person or persons driving or operating such passenger carrying bus or truck, without first standing such examination and receiving a certificate, certifying such person or persons' fitness to operate such vehicle, shall be guilty of a misdemeanor.

[fol. 33] Section 7

No such motor vehicle engaged in the carriage of passengers for hire shall carry on the top of said vehicle or on its sides any pieces of baggage or other detachable object weighing more than 150 pounds, and said baggage shall be securely strapped and fastened.

Section 8

It shall be the duty of the law enforcement officers of the State and of each county, city or other municipality to see that the provisions of this Act and all other laws of this State regulating the operation of such vehicles, are enforced within their respective jurisdictions; and to this end such officials as well as the Public Service Commission and its representatives employed under this Act are hereby given the authority and the power to check all motor vehicles for hire using the public highways of this State, and determine

whether they have complied and are complying with the provisions of this Act and all other laws of this State regulating the use of the public highways by motor vehicle carriers for hire.

Section 9

Any person, firm or corporation operating any motor vehicle in violation of this Act or who shall violate any of the provisions of this Act in any otherwise, shall be guilty of a misdemeanor and punished as such. Every trip made by any such vehicle in violation of this Act shall constitute a separate offense, and the courts of any county in which any part of any such trip is made shall have jurisdiction for the prosecution and trial of cases made hereunder.

Section 10

Each section of this Act and each part thereof is hereby declared to be independent sections and parts of sections, and the holding of any section or any part of a section to be void or ineffective for any cause shall not affect any other section of this Act or part of a section.

Section 11

Only such laws and parts of laws as are inconsistent with this Act are repealed hereby.

Approved March 31, 1931.

[fol. 34] EXHIBIT "B" TO PETITION

"Motor Common Carriers Act of 1931."

[Seal]

Issued from the Office of the Georgia Public Service Commission.

(Repeals "Motor Carrier Act of 1931" insofar as that act applies to motor common carriers.)

James A. Perry, Chairman; Perry T. Knight, Vice-Chairman; Walter R. McDonald, Albert J. Woodruff, Calvin W. Parker. Robert N. Springfield, Secretary. E. M. Price, Rate Expert.

Atlanta, Ga., August 27, 1931.

Exhibit B.

[fol. 35]

An Act

To prescribe conditions and regulations under which common carriers by motor vehicles are permitted to operate upon highways in this State; to regulate the business of common carriers for hire by motor vehicles operated over the highways of this State; and the use of vehicles therein; to define "motor common carriers;" to give the Georgia Public Service Commission jurisdiction and regulatory powers over said carriers and said business and vehicles used in said business; to authorize railroad companies to operate motor vehicles on the highways and to own stock in corporations organized or operating as motor carriers; to make provisions as to service of notice and process on such motor common carriers; to make provisions as to venue of actions against them; to make provisions as to the fees to be paid for certificates, registrations and for permits; to make provisions for the enforcement of this Act and rules and regulations made under its authority; to provide for the punishment for violations of this Act and the rules and regulations made under its authority; to authorize injunction suits against such motor carriers to prevent operations in violation of law or rules and regulations made under authority of law; to provide for the keeping of records and the making of reports by such carriers; to protect the public as to the operation of such carriers; to make the provisions of this Act supersede prior laws on the same subject; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is enacted by authority of the same:

Section 1

This Act may be cited as the "Motor Common Carriers Act of 1931."

Section 2

When used in this Act, unless otherwise expressly stated or unless the context plainly requires a different meaning,

the following words and phrases shall be given the following meaning:

(a) The term "person" shall include an individual, a firm, a co-partnership, corporation, company, an association or a joint stock association.

(b) The word "Commission" means the Georgia Public Service Commission.

[fol. 36] (c) The words "Public highway" mean every public street, road, highway or thoroughfare of any kind in the State used by the public.

(d) The word "Certificate" means a certificate of public convenience and necessity issued under this Act.

(e) The words "motor common carrier," mean every person owning, controlling, operating, or managing any motor-propelled vehicle (and the lessees, receivers or trustees thereof) used in the transporting of persons and/or property (otherwise than over permanent rail tracks) for hire on the public highways of this State as a common carrier.

(f) The word "vehicle" or "motor vehicle" shall include a trailer and each trailer shall be deemed a separate vehicle.

Section 3

The Commission is hereby vested with power to regulate the business of any person engaged in the transportation as a common carrier of persons or property, either or both, for hire, by motor vehicle on any public highway in this State.

Section 4

(a) No motor common carrier shall, after this Act goes into effect, except as hereinafter provided, operate without first obtaining from the Commission, after hearing under the provisions of this Act, a certificate of public convenience and necessity pursuant to findings to the effect that the public interest requires such operation.

(b) The Commission may issue the Certificate prayed for or issue it for the partial exercise of the privilege sought; and may attach to the exercise of the rights

granted by such certificate such terms and conditons as in its judgment the public interest may require.

(c) All certificates of public convenience and necessity granted under the Motor Carrier Act of 1929 or the Motor Carrier Act of 1931, shall continue in force and effect until revoked by the Commission or surrendered by the holders.

(d) The Commission may at any time, after notice and opportunity to be heard and for reasonable cause, suspend, revoke, alter or amend any certificate issued under this [fol. 37] Act or the Motor Carriers Act of 1929 or the Motor Carriers Act of 1931, if it shall be made to appear that the holder of the Certificate has wilfully violated or refused to observe any of the lawful and reasonable orders, rules or regulations prescribed by the *the* Commission or any of the provisions of this Act or any other law of this State regulating and/or taxing motor vehicles or if, in the opinion of the Commission, the holder of the certificate is not furnishing adequate service, or if the continuance of said Certificate in its original form is incompatible with the public interest. If and when the Commission shall undertake to revoke or modify one or more Certificates on account of the public interest on the ground that the traffic conditions are such as not to justify the number of motor carriers which have been granted certificates over the route or routes in question, preference shall be given to certificates in order of the time of their issuance so that those who have been issued later in point of time shall, other things being equal, be cancelled rather than those issued earlier in point of time.

(e) Any such certificate may be transferred or hypothecated upon application to and approval by the Commission and not otherwise.

(f) In determining whether such certificate of public convenience and necessity shall be granted, the Commission, among other things, must consider the following:

(1) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs;

(2) The Volume of existing traffic over such route and whether such traffic and that reasonable to be anticipated in the future can support already existing transportation agencies and also the applicant;

(3) Financial ability of the applicant to furnish adequate, continuous and uninterrupted service for the year round; and to meet the financial obligations of the service which the carrier proposes to perform;

(4) The effect, expense and burden on the public highways, including bridges, and on the traffic, both private and common carrier, thereon;

(5) The effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate will or may seriously impair essential existing public service.

[fol. 38] Section 5

The Commission shall adopt rules prescribing the manner and form in which motor common carriers shall apply for Certificates required by this Section. Among the rules adopted there shall be rules as follows:

That the application

(a) shall be in writing, under oath:

(b) shall contain full information concerning the applicant's financial condition, the equipment proposed to be used, including the size, weight and capacity of each vehicle to be used, and other physical property of the applicant;

(c) shall state the complete route or routes over which the applicant desires to operate; and

(d) the proposed time schedule of the operation;

(e) shall set forth all existing transportation in the territory proposed to be served and wherein the public needs additional service, and why; and

(f) any such other or additional information as the Commission may order or require.

Section 6

The Commission, upon the filing of a petition for certificate of Convenience and Necessity, shall fix a time and place for hearing thereon and shall give notice thereof by advertising the same at the expense of the applicant in a newspaper in Atlanta, Georgia, in which Sheriffs' no-

tices are published, once ten days in advance of the hearing; and the applicant shall give all Common carriers by rail or motor, in the territory sought to be served, at least ten days' notice in writing, and make proof thereof to the Commission.

Section 7

No certificate shall be issued or continued in operation unless the holder thereof shall give and maintain bond with adequate security, for the protection in case of passenger vehicles, of the passengers and baggage carried, and of the public, against injury proximately caused by the negligence of such motor common carrier, its servants or agents, and in cases of vehicles transporting freight, to secure the owner or person entitled to recover therefor against loss or damage to such freight for which the motor [fol. 39] common carrier may be legally liable, and for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents.

The Commission shall approve, determine and fix the amount of such bonds, and shall prescribe the provisions and limitations thereof, and such bonds shall be for the benefit of and subject to suit or action thereon by any person who shall sustain actionable injury or loss protected thereby. The Commission may, in its discretion, allow the holder of such certificate to file in lieu of such bond a policy of indemnity insurance in some indemnity insurance company authorized to do business in the State of Georgia, which policy must substantially conform to all of the provisions hereof relating to bonds and must likewise be approved by the Commission. The Commission shall have power to permit self-insurance in lieu of a bond or policy of indemnity insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

Section 8

The Commission shall prescribe just and reasonable rates, fares and charges for transportation by motor common carriers, of passengers, baggage and property and for all services rendered by motor common carriers in connection therewith, and the tariffs therefor shall be in such form, and shall be filed and published in such manner and

on such notice as the Commission may prescribe and shall be subject to change on such notice and in such manner as the Commission may prescribe.

Section 9

No motor common carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of passengers and property or for any service rendered in connection therewith than the rates, fares and charges prescribed or approved by order of the Commission; nor shall any motor common carrier unjustly discriminate against any person in its rates, fares, charges of service, but the Commission may prescribe by general order to what persons motor common carriers may issue passes or free transportation, and may prescribe upon the same terms and conditions as now apply to railroad carriers reduced rates for special occasions; and may fix and prescribe rules and schedules.

[fol. 40]

Section 10

Motor common carriers may, as an incident to their business, carry mail, parcels and packages, under such rules and regulations as may be prescribed by the Commission.

Section 11

Motor common carriers may confine themselves to carrying either white or colored passengers, or they may provide different motor vehicles for carrying white and colored passengers; and they may carry white and colored passengers in the same vehicle but only under such conditions of separation of the races as the Commission may prescribe.

Section 12

Motor common carriers shall not be compelled to carry baggage of passengers, except hand baggage; the character, amount and size of which the motor carrier may limit by its rules and regulations, subject to the approval of the Commission, and the Commission may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor common carrier shall elect to carry the personal baggage of passengers (other than hand baggage), the Commission shall prescribe just and reasonable

rates therefor, and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor.

Section 13

Every non-resident person and every foreign corporation being a motor common carrier shall before any certificate is issued to him or it under this Act designate and maintain in this State an agent or agents upon whom service of process or notice may be made, and who shall have power to accept or acknowledge service or notice in behalf of such non-resident person or foreign corporation, and such service or notice shall have the same effect as if made personally upon such non-resident or such foreign corporation, such designation to be in writing, giving the name and address of such agent or agents, and to be filed in the office of the Comptroller-General. In case of non-resident persons or foreign corporations to whom certificates have been issued under prior acts, the designation of agent or agents for pur- [fol. 41] pose of service or process and/or notice as aforesaid shall be made within 30 days from the date of the approval of this Act. Upon failure of any motor common carrier who is a non-resident person or a foreign corporation to file said designation of agent as aforesaid or to maintain in this State, at the address given, such agent, such motor common carrier shall be conclusively deemed to have designated the Comptroller-General of this State and his successors in office as such agent; and service of process or notice upon or acceptance or acknowledgment of service thereof by the Comptroller-General shall have the same effect as if personally made upon such motor common carrier. Action against motor common carriers, except in those cases where the Constitution of this State otherwise provides, may be brought and maintained in any county or militia district where the action could be brought if the defendant were a railroad company being sued upon a like cause of action; and if the defendant or defendants or any of them be not found for service in the county or militia district, as the case may be, where the action is brought, second original or originals may issue and service be made in any other county where the service can be made upon the defendant or defendants or his, its or their agents.

This provision of this Section shall apply to motor common carriers, whether engaged in interstate commerce or not.

Section 14

A motor common carrier shall have the right to discontinue its whole service on any route upon thirty days' published notice to be prescribed by the Commission and thereupon its certificate therefor shall be cancelled. A motor common carrier shall have the right to discontinue any part of its service on any route upon thirty days' published notice, subject, however, to the right of the Commission to withdraw its Certificate for such route, if, in the opinion of the Commission, such diminished service is not adequate or any longer compatible with the public interest.

Section 15

Railroad Companies operating in this State are hereby authorized to operate motor vehicles for hire upon highways, provided they obtain from the Commission a certificate under this Act, and provided further that they shall be as to said motor vehicles motor carriers under this Act [fol. 42] and subject to all the provisions of this Act; and railroad companies operating in this State are also authorized to own the whole or any part of the capital stock of a corporation or corporations organized or operating as a motor carrier. But no railroad company, nor any company whose stock is owned by a railroad company shall be granted a Certificate of Public Convenience and Necessity without proof such as would be required by an independent motor carrier.

Section 16

In all respects in which the Commission has power and authority under this Act, proceedings may be instituted, complaints made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, and any final order may be reviewed in any court of competent jurisdiction of this State under the conditions and subject to the limitations as now prescribed by law as relates to the Georgia Public Service Commission.

Section 17

A fee of thirty-five ($35) dollars shall be charged for the issue of every certificate and a fee of seven and 50/100

($7.50) dollars for the transfer of a certificate, which shall be paid to the Commission when the Commission has approved the application for the Certificate or transfer and no certificate shall issue or be transferred, as the case may be, until the said fee has been paid.

Section 18

Every motor common carrier shall annually on or before January first as long as such certificate remains in force, or before the vehicle is put into use as to a vehicle put into use during the course of the year, make application to the Commission for registration of each and all motor vehicles to be operated under said certificate in manner and form as the commission may by rule or regulation prescribe and shall pay to the commission a fee of $25 for each vehicle, for the registration of the same and the issuance of a permit or license to operate the same.

No sub-division of this state, including cities, municipalities, villages, townships or counties shall levy any excise, license or occupation tax or any nature on said equipment, [fol. 43] or the right to operate said equipment or any incidents of said motor carrier business, or on a motor common carrier.

The money derived from the issuance and transfer of certificates and from the registration fee shall be subject to be used by the Commission for the administration and enforcement of this Act and any sum as may be left over and unexpended on the first day of January of each year shall be paid to the State Treasurer and shall be disbursed by him and paid to the State Highway Department for use in maintenance and repair of the highways as in the discretion of the Highway Board may be directed.

Section 19

(a) Motor Common carriers shall keep records upon forms prescribed by the Commission of all motor vehicles and trailers used during the current calendar quarter. On or before the tenth of the month following they shall file under oath with the Commission upon forms prescribed by the Commission summaries of their daily records which will show the capacity of their motor vehicles and trailers and the miles operated by each motor vehicle and trailer during the preceding month, together with such other in-

formation as the Commission may require. Such summaries of daily records shall be filed and preserved by the Commission for a period of at least two years.

(b) The Commission shall prescribe the books and the forms of account to be kept by the holders of the certificates which shall be preserved for such reasonable time as may be prescribed by the Commission. The Books and records of every certificate holder shall be at all time open to the inspection of said Commission or any agent appointed by it for such purpose. The Commission shall have the power to examine the books and records of all motor common carriers to whom it has granted certificates to operate hereunder and to examine under oath the officers and agents of any motor common carrier with respect thereto.

Section 20

(a) Every officer, agent or employee of any corporation and every person who violates or fails to comply with the provisions of this Act or any order, rule or regulation of the Commission, or who procures, aids or abets therein, is [fol. 44] guilty of a misdemeanor, and upon conviction shall be punished as for a misdemeanor.

(b) Every officer, agent or employe of any corporation and every other person who knowingly accepts or receives any rebate or drawback from the rates, fares or charges established or approved by the Commission for motor common carriers or who procures, aids or abets therein or who uses or accepts from a motor common carrier any free pass or free transportation, not authorized or permitted by law or by the orders, rules or regulations of the Commission, or who procures, aids or abets therein, shall be guilty of a misdemeanor and upon conviction shall be punished as for a misdemeanor.

(c) The possession of goods, wares or merchandise loaded on a motor vehicle consigned to any person, firm or corporation, being transported or having been transported over the highways in Georgia, without the authority of a certificate for so doing having been issued by the Georgia Public Service Commission, shall be prima facie evidence that such one so transporting such goods, wares, or merchandise is with intent and in violation of the law regulating the transportation of persons and property over the highways in Georgia. Any person claiming the benefit of

any exception made in this Act shall have the burden of proving that he falls within the exception.

Section 21

The Commission is hereby authorized to employ such persons as may be necessary in the discretion of the Commission, for the proper enforcement of the provisions of this Act, the salaries for such employees to be fixed by the Commission. The traveling expenses of the Commission and its employees incurred in the performance of this Act shall be paid out of the funds derived under this Act.

Section 22

Each section of this Act and each part thereof is hereby declared to be independent sections and parts of sections, and the holding of any section or any part of a section to be void or ineffective for any cause shall not affect any other section of this Act or part of a section. If there be any exception in this Act to which to give effect will invalidate [fol. 45] the Act, such exception shall be held to be invalid and of no force and the Act applied as if such exception had not been made.

Section 23

This Act shall be cumulative to other laws regulating the use of motor vehicles on the highways.

Section 24

The Commission shall have the authority to promulgate rules designed to promote safety, and any such safety rules promulgated or deemed necessary by such Commission shall include the following:

(a) Every motor unit and all parts thereof shall be maintained in a safe condition at all times. And the lights and brakes and equipment shall meet such requirements as the Commission shall from time to time promulgate.

(b) Every driver employed by a motor common carrier shall be at least eighteen years of age of temperate habits and good moral character, and shall be fully competent to operate the motor vehicle under his charge.

(c) Accidents arising from or in connection with the operation of common carriers shall be reported to the Commission in such detail and in such manner as the Commission may require.

(d) The Commission shall require and every motor common carrier shall have attached to each unit or vehicle such distinctive marking or tags as shall be adopted by the Commission.

Section 25

It shall be unlawful for any motor common carrier, its officers or agents, subject to this Act to require or permit any driver to be or remain on duty for a longer period than ten consecutive hours, and whenever any such driver shall have been continuously on duty for ten hours he shall be relieved and not required or permitted to go on duty until he has had at least ten consecutive hours off duty, except that in cases of unforseen emergency a driver may remain on duty not in excess of twelve hours or for such time as will enable him to complete his regular run.

Section 26

The Commission is hereby authorized to adopt such rules and orders as it may deem necessary in the enforcement [fol. 46] of the provisions of this Act. Such rules and orders so approved by the Commission shall have the same dignity and standing as if such rules and orders were specifically provided in this Act.

Section 27

When a petition for a Certificate of Public Convenience and Necessity has been in whole or in part denied by the Commission or has been granted by the Commission and the order of the Commission granting same has been quashed or set aside by a court of competent jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the Commission within three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order.

Section 28

Nothing in this or any previous Act of the General Assembly shall ever be construed to vest in the owner or holder or assignee of any Certificate of Public Convenience and Neccssity any vested right to use the public roads of this State and shall never be construed to give to any motor common carrier any perpetual franchise over such public roads.

Section 29

Any motor common carrier who operates on the highways of this State without the required certificate of public convenience and necessity, or after such certificate is cancelled, or without having registered his vehicle or vehicles as provided for in this Act, or otherwise than is permitted by the terms of said certificate and/or the laws of this State, may be enjoined by the courts of this State from operating on the highways of this State at the suit of the Commission, or at the suit of a motor carrier or rail carrier which competes with it, or any individual. .

Section 30

A motor common carrier engaged solely in interstate commerce on or over the highways in this State may operate without a certificate, but shall register with the Commission the routes over which they operate, the number of motor vehicles and trailers operated by them and the char- [fol. 47] acter and capacity of such vehicles, the forms for such registration to be prescribed by the Commission; and such motor carriers shall give the bond or indemnity insurance prescribed by this Act, (omitting the protection in respect of their own passengers and cargoes) and such motor common carriers shall pay annually the registration fee prescribed in this Act, for each vehicle operated by it over the highways of this State.

Where a motor common carrier is engaged in both interstate and intrastate commerce, he shall nevertheless be subject to all the provisions of this Act so far as it separately relates to his commerce done exclusively in this State. It is not intended that the Commission shall have the power of regulating the interstate commerce of such motor common

carrier, except to the extent herein expressly authorized as to such commerce. Sections 8, 9, 10, 12, 14 and 19 do not apply to purely interstate commerce or to carriers exclusively engaged in interstate commerce. When a motor common carrier is engaged both in intrastate and interstate commerce he shall be subject to all the provisions of this Act so far as they separately relate to his commerce done in this State.

Section 31

The provisions in this Act shall not apply to:

(a) Motor vehicles engaged solely in transporting school children and teachers to and from public schools.

(b) Taxicabs, drays, trucks, busses and other motor vehicles, which generally operate exclusively within the incorporate limits or police limits of cities and towns and are subject to regulation by the governing authorities of such cities and towns or by the Commission; and this exception shall apply even though such vehicles may in the prosecution of their regular business occasionally go beyond the incorporate limits of such towns or cities provided they do not operate to or from fixed termini outside of said limits.

(c) To motor vehicles operated exclusively within a radius not exceeding 5 miles from some railroad freight or passenger depot or station, when the operation of the same is by a common carrier which is under the jurisdiction of the Interstate Commerce Commission of the United States.

[fol. 48] Section 32

Motor common carriers shall observe the laws of this State in respect of size, weight and speed of their vehicles. Intrastate motor common carriers of passengers shall and interstate motor common carriers of passengers may file with the Commission the schedules upon which they propose to operate their vehicles, which said schedule shall be such as that the net running time of vehicles between terminal points does not exceed 30 miles per hour; and any motor common carrier of passengers filing such a schedule shall be allowed to operate his vehicles on the highway at a rate of speed not exceeding 40 miles per hour in order to maintain a schedule so filed.

Section 33

All laws and parts of laws in conflict herewith and the Motor Carriers Act of 1929 and the Motor Carriers Act of 1931, so far as they apply to motor common carriers, are hereby superseded and repealed except that the repeal of such existing laws shall not exempt any person from any penalties incurred by him for violation thereof or for violation of any rule or regulation made thereunder; and that rates, fares and schedules prescribed by the Commission under prior laws shall remain in force until otherwise provided for by the Commission and all taxes, fees and charges which were payable under such former Acts which have not been paid, shall remain payable, nor shall any bond or indemnity insurance given under any prior law be affected hereby.

[fols. 49-55] *Duly sworn to by Mac Asbill. Jurat omitted in printing.*

[fols. 56-62] In Superior Court of Fulton County

No. 99645

Aero Mayflower Transit Company

vs.

Georgia Public Service Commission, et al

Judgment—Filed Nov. 22, 1933

The general demurrer of defendants to the petition as amended coming on for hearing, after argument of counsel,

It is considered, ordered and adjudged that the said general demurrer be sustained and the petition as amended be dismissed.

No ruling is made upon the special demurrers to the petition at this time.

Supersedeas is granted upon condition that plaintiff execute to the defendants a good and sufficient bond to be approved by the clerk of this court, in the sum of one thousand ($1,000.00) dollars, conditioned upon the payment of all license fees prescribed by the Acts of the General As-

sembly referred to in the petition in the event that it is determined upon a final adjudication of this case by the Supreme Court of Georgia that the plaintiff is liable therefor.

This November 22, 1933.

E. D. Thomas, Judge Superior Court, Atlanta Circuit.

[File endorsement omitted.]

[fol. 63] IN SUPREME COURT OF GEORGIA

No. 10070

AERO MAYFLOWER TRANSIT COMPANY,

vs.

GEORGIA PUBLIC SERVICE COMMISSION, et al.

OPINION

By the COURT:

1. "An automobile-haulage contractor holding himself out as ready to carry goods to any destination and inviting the patronage of the public generally, but who reserves to himself the right of accepting or rejecting their offers of goods for carriage, being guided in his decision by the attractiveness or otherwise of the particular offer, and not by his ability or inability to carry, having regard to his other engagements, is not a common carrier." McInTyre v. Harrison, 172 Ga. 65, 84 (157 S. E. 499). See Georgia Public Service Commission v. Taylor, 172 Ga. 100 (157 S. E. 515).

(a) Accordingly, where it is alleged that the petitioner operates motor-trucks over the highways as an interstate contract hauler, doing the business of hauling household and office furniture only for persons with whom it desires to contract, publishes no rates, and operates over no fixed routes, the petition will be held on demurrer to allege that the petitioner is not a common carrier.

(b) The motor-carrier act approved August 27, 1931 (Ga. Laws 1931, p. 199), having reference to motor common car-

riers, is inapplicable to the instant case, and no ruling will be made upon the assignments of error relating to constitutionality of that act.

2. Section 18 of the motor carrier act approved March 31, 1931 (Ga. L. Ex. Sess. 1931, pp. 99-108), considered in connection with sections 4(a) and 21, provides a charge, not [fol. 64] a privilege tax for carrying on interstate business, but for the use of the public highways of the State, and, properly construed, manifests a legislative intent and expressly allocates the fees of $25 for each motor vehicle therein provided for (a) to the cost of administration and enforcing the provisions of the act, and (b) the cost of building, maintenance, and repair of the highways of the State.

(a) The prescribed fee applies indiscriminately whether the carrier be engaged in intrastate or interstate traffic, or whether it be a common carrier or private carrier.

(b) The mere fact that the prescribed fee is a flat sum does not make it unreasonable. Interstate Transit Incorporated v. Lindsey, 283 U. S. 183 (51 Sup. Ct. 380); American Transit Co. v. Philadelphia, 18 Fed. (2d) 991 (2). In the instant case the small fee of $25 for each truck is not an unreasonable charge for the use of the highways for the period specified in the act.

(c) The provision of the act in question is not discriminatory.

3. Section 18 of the motor-common carrier act approved March 31, 1931, construed as indicated in the preceding note, does not, as applied to motor vehicles engaged exclusively in interstate commerce, violate the commerce clause of the Federal constitution for any reason alleged.

4. Section 18 of the motor-carrier act approved March 31, 1931, does not violate the equal-protection and due-process clauses of the Federal constitution for any reason assigned.

5. The hauling of farm products by motor vehicles as referred to in paragraph 16 of the petition, and the require- [fol. 65] ments as to giving bond as therein mentioned, are proper matters for classification; and the exemptions based on such classification do not render the act unconstitutional.

6. The court did not err in dismissing the petition on demurrer.

The Aero Mayflower Transit Company, a foreign corporation, as owner and operator solely in interstate commerce of a large number of motor vehicles, instituted an action against the Georgia Public Service Commission and the Comptroller General of this State, attacking the validity and constitutionality of the "motor-carrier act" approved March 31, 1931 (Ga. L., Ex. Sess. 1931, p. 99 et seq.), and the "motor common-carriers act" approved August 27, 1931 (Ga. L. 1931, p. 199 et seq.), and particularly section 18 of each act. Among the allegations of the petition are the following: "That plaintiff is engaged solely in interstate commerce into, through, and from the State of Georgia, in the course of which it operates motor vehicles commonly called trucks, and transports only house and office furniture for its patrons from States outside the State of Georgia to points in the State of Georgia, from points in the State to points in States outside of Georgia, and from points outside of Georgia through Georgia to points in other States. That plaintiff operates many of its motor vehicles empty through the State of Georgia; that plaintiff owns all of the motor vehicles used in its business, and its equipment consists of 50 vehicles of 3-ton rated net [fol. 66] carrying capacity, 4 vehicles of 2-ton rated net carrying capacity, and 16 vehicles of 1½-ton rated net carrying capacity. That all the motor vehicles of plaintiff are equipped with pneumatic tires. That plaintiff is incorporated for the purpose of transporting for pay goods of such persons as it may desire to contract with, and under its charter it is authorized to do that kind of business, and plaintiff is engaged solely in interstate commerce as to its operations within the State of Georgia. Transportation is not offered by plaintiff to the general public or to any other persons than those with whom it contracts; and plaintiff is not a common carrier of goods, but is a contract carrier for hire under the provisions of the motor-carrier act of 1931 as contained in Georgia Laws, Extraordinary Session 1931, pp. 99 through 114, and the motor common-carriers act of 1931 (Georgia Laws, 1931, pp. 199 to 213) has no application to plaintiff; but defendants contend that the latter act is applicable to plaintiff." Other allegations set forth amounts collected through registration and license

fees for the years 1931, 1932, and 1933, and charged that the amount so collected "had been expended by November 9, 1933, in administering the regulations of said acts," and that under the present budget for 1933 practically all the funds collected from the registration and license fees will be expended "in administering the acts for the balance of the year 1933."

The petition as amended contained also the following: "That in the operation of its interstate business for the balance of the year 1933, plaintiff will send into, through, or from the State of Georgia in interstate commerce at least twelve vehicles which have not heretofore during the year 1933 operated within the State of Georgia; that defendants will collect registration fees of $25 upon each of said vehicles to be operated by plaintiff in interstate com- [fol. 67] merce within the State of Georgia for the balance of the year 1933, unless defendants are enjoined in this proceeding; that based on past experience, and because of the satisfactory service rendered by plaintiff, it will operate in interstate commerce into, through, and out of the State of Georgia during the year 1934 at least 60 different motor vehicles, upon each of which vehicles defendants will collect a registration fee of $25, unless defendants are enjoined in this proceeding. * * * That defendants have in the past prevented plaintiff from using its motor vehicles in interstate commerce in Georgia, and have caused said vehicles, including the loads therein contained belonging to the patrons of plaintiff and coming into and passing through the State of Georgia, to be impounded without legal process, and have forced plaintiff to pay the unconstitutional and void registration fees upon some of its vehicles in order for plaintiff to effect delivery of goods brought into the State of Georgia in interstate commerce, to secure the release of vehicles and their contents being operated through Georgia, and to prevent the drivers and operators of its vehicles from being arrested, prosecuted, fined, and from having the penalties prescribed under the various acts of Georgia assessed against plaintiff and its drivers; that defendants threaten to continue to impound each motor vehicle of plaintiff that comes into or seeks to pass through the State of Georgia in interstate commerce unless the registration fees demanded by defendants are paid by plaintiff upon each vehicle, threaten to prosecute plaintiff and

each driver of a motor vehicle that plaintiff sends into or through Georgia in execution of its contract with shippers outside of Georgia, and threaten to hold the contents of the motor vehicles as well as the motor vehicles themselves unless plaintiff submits to the exaction of the unconstitutional registration fees; that in the event said threats of [fol. 68] defendants are carried into effect, plaintiff will be forced to lose completely its interstate business into, through, and out of the State of Georgia, which business has been built up and is being built up by plaintiff, and the right to conduct same is of the value of more than $10,000; that for defendants to carry their threats into effect will involve plaintiff and the drivers employed by it in a multiplicity of suits and prosecutions, and the damages thus arising from the prosecutions and the detention of the trucks of plaintiff will result in irreparable loss and damage to plaintiff; that the seizure and impounding of the various motor vehicles of plaintiff, including the contents thereof, which belongs to its patrons, will subject plaintiff to loss, damage, and inconvenience which will be irremediable, and will interfere with the contract rights of plaintiff to the injury of its patrons. * * * That prior to the filing of this complaint defendants, by illegally impounding the trucks of plaintiff including their contents belonging to clients of plaintiffs, and which trucks were operating in interstate commerce in Georgia, forced plaintiff to purchase 48 registration tags at a total cost of $1200. That before this complaint was filed defendants threatened in the future to force payment of the $25 per truck registration fee upon each truck of plaintiff that entered the State of Georgia in interstate commerce, and defendants threatened plaintiff and its drivers with continued prosecution if plaintiff operated its trucks in interstate commerce in Georgia without payment of the attacked fees. Plaintiff shows that the continued prosecution of itself and its drivers for the failure of plaintiff to pay the registration fee of $25 per truck imposed by the attacked acts would destroy its business and cause it to suffer irreparable damage." The prayers were, for injunction to prevent enforce-
[fol. 69] ment of section 18 of the act cited, to prevent the arrest of petitioner's agents and employees, and to prevent interference in any manner with the operation of plaintiff's business; that section 18 of the motor common-car-

riers act be declared unconstitutional; that the entire motor-carrier act be held unconstitutional; that the motor-carrier act be held inapplicable to plaintiff; and for general relief. A demurrer was interposed on the ground that the petition alleged no facts in law or equity to entitle the plaintiff to the relief prayed for. The demurrer was sustained and the action dismissed, and the plaintiff excepted.

ATKINSON, J.:

1. The ruling announced in the first headnote does not require elaboration.

2. In section (a) of the motor-carrier act approved March 31, 1931 (Ga. L. Ex. Sess. 1931, pp. 99-102) it is declared: "No motor carrier shall, after this act goes into effect, operate without first obtaining from the commission, after hearing under the provisions of this act, a certificate of public convenience and necessity, pursuant to findings to the effect that the public interest requires such operation." In section 18 it is declared: "Every motor carrier shall, as soon as the certificate is issued, and annually on or before each succeeding January 1st, as long as such certificate remains in force, make application to the commission for registration and license of all motor vehicles to be operated under said certificate, and upon payment of a fee of $25 for each vehicle to the comptroller-general shall be entitled to register the same and receive a license therefor. The sum or sums derived herein from the issuance and transfer of certificates of convenience and neces- [fol. 70] sity by the comptroller-general, shall be paid to the State treasurer, who shall keep such sums thus paid to him in a separate fund to be known as the motor-vehicle fund. From such funds thus derived the State treasurer shall, upon proper warrant from the Governor, pay all the expenses and salaries of every character as due and provided herein. Such sum or sums as may be left after such salaries and supervisory expenses have been paid, as may remain unexpended on the 1st day of January each year, shall be paid to the State Highway Department for use in maintenance and repair of the highways, as in the discretion of the Highway Board may be directed." In section 21 it is declared: "The commission is hereby authorized to employ such persons as may be necessary, in the discretion of the commission, for the proper enforcement

of the provisions of this act, the salaries for such employees to be fixed by the commission. The traveling expenses of the commission and its employees incurred in the performance of this act shall be paid, as similar expenses of the commission, out of the motor-vehicle fund." Thus section 18, considered in connection with sections 4(a) and 21, provides a charge for the use of the public highways of the State, manifests a legislative intent, and expressly allocates the fee of $25 for each motor vehicle therein provided for (a) to the cost of administration and enforcing the provisions of the act, and (b) the cost of building, maintenance, and repair of the highways of the State. The prescribed fee applies indiscriminately whether the carrier be engaged in intrastate or interstate traffic or whether he be a common carrier or private carrier.

3. In the petition section 18 of the motor-carrier act of March 31, 1931, is alleged to be violative of article 1, section 8, paragraph 3, of the constitution of the United States (Civil Code, §.6644, par. 3), conferring upon the [fol. 71] Congress power "to regulate commerce with the foreign nations, and among the several States, and with the Indian tribes," for the following reasons:

(a) The fee authorized by said section imposes an unjust, substantial, direct and unreasonable burden on interstate commerce, and is more than an equivalent for the service rendered by the State authorities of Georgia in supervising and inspecting the interstate operations of plaintiff's motor vehicles.

(b) Said fee as contained in said section is a flat annual charge per vehicle, substantial in amount, and the same for motor vehicles plying the highways continuously in local service and for interstate motor vehicles only making, as do the motor vehicles of plaintiff, trips at infrequent intervals upon the highways of the State of Georgia, and could not have been and was not designed as a measure of the cost of the supervision of interstate vehicles operating over the state highways.

(c) Said fee as contained in said section is not predicated upon the need for or cost of regulation of vehicles operating in interstate commerce over the highways of the State of Georgia, and the amount of the fee is not dependent upon such cost of, or need for, regulation. Said fee does not arise

with an increase in mileage traveled or with the weight actually carried on the highways of the State. Said fee does not vary in accordance with the size of vehicle operated over the State highways in interstate commerce, nor does said fee vary in proportion to the use of the State highways.

(d) Said fee as contained in said section, being a flat, annual charge of $25 for each vehicle, bears no reasonable relation to the actual cost of supervision and regulation of the operations of the trucks of plaintiff in interstate commerce through, into and from Georgia, but is the same for a motor vehicle operating empty or loaded in full or in part only, and is the same regardless of the mileage [fol. 72] traveled over the State highways or the time the vehicle operates in Georgia.

(e) Said fee as contained in said section, being a flat, annual charge of $25 per vehicle, has no reasonable relation nor does it bear any relation to the cost of inspecting, controlling, or supervising the interstate business conducted by plaintiff or the operations of motor vehicles owned and operated by plaintiff in interstate commerce, and such registration fee is a direct, substantial burden upon interstate commerce, and the total thereof is in excess of any reasonable or just charge that might be levied by the State of Georgia to defray the expense of supervising, controlling, or inspecting the interstate business of plaintiff or the operations of its motor vehicles which operates only at infrequent intervals in interstate commerce upon the State highways of Georgia.

(f) The registration fee prescribed by section 18 is not predicated upon or related to the use made or to be made of the highways of the State of Georgia by motor vehicles operating in interstate commerce, and the amount of the registration fee is not dependent upon such use or upon the need for regulating or policing said vehicles.

(g) The registration fee prescribed by section 18 does not pretend to be imposed as reimbursement or compensation for the use of the State highways, but the funds arising from the registration fees are to be expended to enforce the police regulations prescribed in the act of which section 18 is part; and

(h) The registration fee prescribed by section 18 is a flat, annual charge of $25 for each vehicle; said fee is not graduated according to the horse-power of the engine, the carrying capacity of the vehicle, or the use made of the State highways by the vehicle. Said fee does not take into consideration the practical measure of size, speed, or difficulty of control with respect to any vehicle, and the [fol. 73] charge of $25 per vehicle is an unreasonable charge to assess against the motor vehicles of plaintiff, none of which vehicles are in excess of 3-ton carrying capacity and none of which operate except at infrequent intervals over the State highways of Georgia."

In Clark v. Poor, 274 U. S. 554 (47 Sup. Ct. 702), it was held: "A State regulation providing that, before operating over the State highways, a common carrier by motor shall apply for and obtain a certificate or permit therefor from a State commission, and shall pay an extra tax for the maintenance and repair of the highways and for the administration and enforcement of the laws governing their use, is constitutional though applied to carriers engaged exclusively in interstate commerce. • • • That the tax so exacted is not all used for maintenance and repair of the highways, but some of it for defraying expenses of the commission in administration and enforcement of the act, and some for other purposes, is no concern of the taxpayer, it being assessed for a proper purpose and not unreasonable in amount." In the opinion it was said: "The plaintiffs claim that, as applied to them, the act violates the commerce clause of the Federal constitution. They insist, that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the State; that it is without power to require that before using its highways they apply for and obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them, under § 614-94, for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce are subject to regulation [fol. 74] by the State to ensure safety and convenience and the conservation of the highways. Morris v. Duby, ante,

p. 135 (47 Sup. Ct. 548); Hess v. Pawloski, ante, p. 352 (47 Sup. Ct. 632). Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. Hendrick v. Maryland, 235 U. S. 610 (35 Sup. Ct. 140, 59 L. Ed. 385); Kane v. New Jersey, 242 U. S. 160 (37 Sup. Ct. 30, 61 L. Ed. —), 264 U. S. 140, 144 (44 Sup. Ct. 257). There is no suggestion that the tax discriminates against interstate commerce. Nor is it suggested that the tax is so large as to obstruct interstate commerce. It is said that all of the tax is not used for maintenance and repair of the highways; that some of it is used for defraying expenses of the commission in the administration or enforcement of the act; and some for other purposes. This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs."

In Continental Baking Co. v. Woodring, 286 U. S. 352 (52 Sup. Ct. 595), it was held: "The use of public highways by private intrastate and interstate carriers of goods by motor may be conditioned by the State upon the carrier's obtaining a license, complying with reasonable regulations, paying a reasonable license fee and a tax, for expenses of highway administration and maintenance and reconstruction of the highways covered by the license, and upon the filing of an insurance policy as security against injuries from the carrier's negligent operations to persons and property other than the passengers and property he carries. • • • In the exercise of its right to demand [fol. 75] compensation for the special highway facilities it has provided, and of its power to regulate the use of its highways in the interest of the public safety, a State may properly treat motor vehicles as a special class, because of the special damage to the highways and special dangers to the public attending their operation." In Interstate Transit Inc. v. Lindsey, 283 U. S. 183 (51 Sup. Ct. 380), it was said: "While a State may not lay a tax on the privilege of engaging in interstate commerce (Sprout v. South Bend, 277 U. S. 163 [48 Sup. Ct. 502], it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public high-

ways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon. * * * As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the use (Interstate Busses Corp. v. Blodgett, 276 U. S. 245 [48 Sup. Ct. 230]) or by the express allocation of the proceeds of the tax to highway purposes, as in Clark v. Poor, supra, or otherwise. Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory. * * * Compare Interstate Busses Corp. v. Holyoke Street Ry., 273 U. S. 45, 51 [47 Sup. Ct. 298]. But the mere fact that the tax falls upon one who uses the highway is not enough to give it presumptive validity." While pronouncing these principles, the decision denounced the tax in question, because upon construction of the statutes it appeared that the tax was not exacted for construc- [fol. 76] tion and maintenance of the highways "but merely as a privilege tax on the carrying on of interstate business." In Hicklin v. Coney, 290 U. S. 169 L. Ed. (Sup. Ct. 78), 143, it was held: "A State, in exercising its control over the use of highways, may make reasonable regulations governing that use by private contract carriers. * * * State regulations of the use of highways by private contract carriers may require, on the part of interstate as well as intrastate carriers, the payment of reasonable license fees and the filing of insurance policies to protect the interests of the public by securing compensation for injuries to persons and property from the negligent operations of such carriers." Applying the foregoing principles to the instant case and giving to section 18 of the motor-carrier act effect as construed in the second division of this opinion, that provision of that act does not violate the commerce clause of the Federal constitution for any of the reasons above set forth.

4. Another attack upon section 18 of said act is that it violates the due-process and equal-protection clauses of

the 14th amendment to the constitution of the United States (Civil Code, § 6700) for the following reasons:

"(a) Said registration fee prescribed by section 18 bears no relation to the cost of regulating motor-vehicle traffic upon the State highways; motor vehicles operating continuously in intrastate commerce over the highways of Georgia, and of more carrying capacity than those of plaintiff, are charged the same fee as plaintiff for more regulation and policing than is required for the vehicles of plaintiff, and the registration fee is discriminatory against plaintiff and the result of an arbitrary classification.

(b) The registration fee prescribed by section 18 could not have been designed as a reasonable measure of the cost of policing and regulating motor vehicles operating over [fol. 77] the highways of the State of Georgia, because the fee is a flat, annual charge per vehicle, regardless of the size or extent of use of the vehicle upon the State highways; and many intrastate vehicles ply the State highways of Georgia continuously, while the vehicles operated by plaintiff only come into or pass through the State of Georgia at infrequent intervals; and therefore the enforcement of said registration fee would discriminate against plaintiff and other interstate operators in favor of intrastate operators, and subject plaintiff and other interstate operators, to the payment of unjust, unreasonable, and excessive regulation charges; and

(c) That the registration fee prescribed by section 18, sought to be imposed for inspecting, controlling, and supervising the operations of motor vehicles of plaintiff, is discriminatory in that section 2 of the motor-carrier act of 1931 * * * exempts from the provisions of the act of which section 18 is a part 'motor vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, as long as the title remains in the producer;' and such exemptions are an unreasonable and arbitrary discrimination against plaintiff and an arbitrary classification, prejudicial to plaintiff, and requiring plain-

tiff to pay an unjust, unreasonable, and discriminatory portion of the total registration fees charged for the inspection, control, and supervision of motor traffic and motor business in Georgia; and such exemptions are in violation of the due-process and equal-protection clauses of the fourteenth amendment, since there is the same need for the [fol. 78] inspection, control, and supervision of the business and trucks of common carriers, contract carriers, and private carriers hauling the excepted articles over the State highways of Georgia as for the inspection, control, and supervision of the business and vehicles of plaintiff, which only operate at infrequent intervals over the same highways."

Section 18 of the motor-carrier act, as construed in the second division above, applies to all motor-vehicle carriers indiscriminately, whether engaged in interstate or intrastate commerce. The fact that a flat rate is charged for each motor vehicle does not, without more, furnish ground for a charge of discrimination, nor does it furnish ground of such charge as applied to the plaintiff as a private carrier exclusively in interstate commerce, operating many motor vehicles which interchangeably come into this State at intervals. A motor vehicle provided with the prescribed license could operate over the highways of the State continuously, and the plaintiff should adjust the movements of its motor vehicles to the requirements of the law. The language "as long as the title remains in the producer" limits the operation of the exemption referred to above to such an extent that the only property in the class mentioned which is exempted is property where the "title remains in the producer." This is a reasonable classification in favor of the producer, which will enable movement of the products over the highways so long as title remains in him without exaction of the prescribed fee. The statute involved in Smith v. Cahoon, 283 U. S. 553 (51 Sup. Ct. 582), did not contain any such words of limitation as referred to above, and the cases are distinguishable. In Nance v. Harrison, 176 Ga. 674 (3) (169 S. E. 22), it was held: "The act of March 31, 1933, as amended by the act of August 28, 1931, levying a tax upon motor carriers in general, does not, by exempting motor carriers of agricultural, dairy, and horti- [fol. 79] cultural products, deny the equal protection of the laws to a motor carrier for hire who is not engaged in the

transportation of such products. The act does not violate any constitutional provision, either State or Federal, as invoked by the plaintiffs." See also Continental Baking Co. v. Woodring, and Hicklin v. Coney, supra. Section 18 of the motor-carrier act approved March 31, 1931, does not violate the equal-protection and due-process clauses of the Federal constitution for any reason assigned.

5. It was further charged in the petition: "That the entire motor-carrier act of 1931, * * * including section 18 thereof, is unconstitutional and unenforceable, for the reason that section 2 of said act exempts from the provisions of the act, including the requirement of bond or indemnity insurance in sections 7 and 30 and payment of registration fee in section 18, certain operators as shown in the preceding paragraph numbered 15, subparagraph (c), which said paragraph is by reference made part hereof. And such exemptions are in violation of the constitution of the United States and of the commerce clause thereof, contained in paragraph 3 of section 8 of article 1 of the constitution of the United States, * * * and said exemptions are in violation of the due-process and equal-protection of the law clauses of the fourteenth amendment to the Federal constitution, copied heretofore, since the exemptions are an arbitrary and unreasonable classification, discriminating against plaintiff in favor of common carriers, contract carriers, private carriers, and owners transporting the said excepted articles, and burdens interstate commerce. Section 2 of said act, being unconstitutional, renders the entire act unconstitutional." The hauling of farm products by motor vehices as just referred to, and the requirements as to giving bond as therein mentioned, are proper matters for classification, and the exemptions based [fol. 80] on such classification do not render the act unconstitutional; Nance v. Harrison, supra; Continental Baking Co. v. Woodring, and Hicklin v. Coney, supra.

6. The court did not err in dismissing the petition on demurrer.

Judgment affirmed. All the Justices concur.

On Motion for Rehearing

A decision was rendered in this case on September 15, 1934, affirming the judgment of the trial court. On motion

for a rehearing the opinion then delivered is withdrawn, and the foregoing opinion is substituted:

IN SUPREME COURT OF GEORGIA

CONCURRING OPINION

GILBERT, J.:

I concur specially in the judgment of affirmance, for two reasons: (1) Because the facts alleged do not afford jurisdiction for the grant of injunction. (2) Because, as shown in the opinion, the trial court properly held that the statute was not unconstitutional for any reason assigned.

[fols. 81-90] IN SUPREME COURT OF GEORGIA

JUDGMENT—September 15, 1934

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

AERO MAYFLOWER TRANSIT COMPANY

v.

GEORGIA PUBLIC SERVICE COMMISSION et al.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

All the Justices concur.

[fol. 91] IN SUPREME COURT OF GEORGIA

ORDER ALLOWING APPEAL—Filed Nov. 6, 1934

Appeal to the United States Supreme Court is allowed, and petition for appeal approved, upon giving of bond as required by law, in the sum of $3,000.00, which bond shall operate as a supersedeas bond, releasing the former supersedeas bond upon filing said bond which is to be approved by this Court. The Clerk of this Court is directed to send

the record herein, duly certified, to the Supreme Court within forty days from this date.

This 5th day of November, 1934.

Richard B. Russell, Chief Justice of the Supreme Court of Georgia.

[File endorsement omitted.]

[fol. 92] IN SUPREME COURT OF GEORGIA

[Title omitted]

ASSIGNMENT OF ERRORS IN APPEAL

Comes now appellant, Aero Mayflower Transit Company, and in connection with its petition for appeal in this proceeding, and says that, in the record, proceedings, and in the final judgment therein, wherein there was drawn in question the validity of a Statute of the State of Georgia on the ground of its being repugnant to the Constitution of the United States manifest error has intervened, to the prejudice appellant, and that the Supreme Court of Georgia erred in deciding in favor of the validity of such statute and in finding and holding:

1. That the statute involved was not unconstitutional as repugnant to the commerce clause of the Federal Constitution and a burden on and an unjust and prejudicial discrimination against such commerce, as Appellant engaged in interstate commerce, was required occasionally and at irregular intervals to pass from, to and through the State of Georgia an average for each vehicle of 936 miles per year, and to pay a tax of $25.00 annually on such vehicles, such law giving the right to other motor vehicles to operate at the same annual tax regularly within said State for annual mileages in excess of thirty thousand miles for each vehicle.

2. That the statute involved is constitutional and not repugnant to the commerce clause of the Federal Constitution as other motor vehicles of the same class operating regularly within said State, under the same statute, and for annual mileages, in many cases, in excess of thirty times the [fol. 93] mileage for each vehicle operated by Appellant,

paid the same amount, and the State of Georgia received from this tax approximately thirty per cent more than was needed to meet the cost of administering said Regulatory Act.

3. As other trucks hauling one and a half tons of freight or less "between points not having railroad facilities and not passing through or beyond towns having railroad facilities" were and are exempted from the regulations and tax which Appellant was required to pay for a less use than was enjoyed by said exempted trucks, such statutory requirements as applied to Appellant denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, and the Supreme Court of Georgia erred in not holding said statute to be unconstitutional.

4. That said Supreme Court of Georgia erred in not holding the statute assailed, which denied Appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, unconstitutional when other trucks "engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer" were and are exempted from the regulation thereof.

5. That said Supreme Court of Georgia erred in not holding the statute, which by defined exemptions gives an undue preference and advantage to owners of other trucks hauling exempted products, to the prejudice and disadvantage of Appellant, in violation of the Fourteenth Amendment to the Federal Constitution, unconstitutional when the words "agricultural products" contained in the quotation in the next preceding sub-division of this assignment were in said Act defined to include "fruit, live-stock, meats, [fol. 94] poultry, eggs, lumber and naval stores, household goods and supplies transported to farms for farm purposes", and also to include "producer or grower and/or orchards and also poultry and eggs and also fish and oysters", and because the word "producer" was defined in said paragraph to include "all other merchants in rural

districts who handle poultry and farm products in pursuance to their own business, and not for hire, timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer."

6. The Supreme Court of Georgia erred in not holding said Act unconstitutional as the Act is arbitrary in that it makes an unnecessary and unreasonable charge in addition to other taxes and provides arbitrary regulations against Appellant in favor of the exempted classes therein named and deprives Appellant of the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

7. The Supreme Court of Georgia erred in not holding said Act to be unconstitutional because of the method of regulating and taxing, and because of the exemptions granted from both taxes and regulations, such Act constituting a scheme of regulating motor truck transportation for hire, both interstate and intrastate, which, taken as a whole, is arbitrary, unreasonable and prejudicial to Appellant, such scheme being in all its elements and as a whole unconstitutional as a burden on interstate commerce, and as a regulation of interstate commerce in violation of the commerce clause of the Federal Government and a violation of the Fourteenth Amendment to the Constitution of the United States in that it denies Appellant the equal protection of the laws.

[fol. 95] For each and all of the errors aforesaid, Appellant prays that the said judgment in the above entitled cause of the Supreme Court of the State of Georgia, dated September 27, 1934 be reversed and a judgment rendered in favor of Appellant, and for costs.

This 5th day of November, 1934.

Edgar Watkins, Edgar Watkins, Jr., Attorneys for Appellant.

[fols. 96-106] [Endorsed:] Supreme Court of Georgia. In Equity. Aero Mayflower Transit Company, Plaintiff in Error versus Georgia Public Service Commission et al., Defendants in Error. Assignment of Errors on Appeal.

Watkins, Grant & Watkins, Attorneys at Law, 1025 Citizens & Southern National Bank Building, Atlanta, Georgia.

[fol. 107] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION AS TO PRINTING RECORD—Filed Dec. 24, 1934

Appellant in the above styled cause intends to rely in this case on the following points:

1. The statute attacked in the case is unconstitutional and void as repugnant to the commerce clause of the Federal Constitution and as a burden on and prejudicial against such commerce for that the tax prescribed by such law discriminates against appellant's business in interstate commerce.

2. That, because appellant's business is of necessity occasional and not regular it is a violation of the commerce clause of the Federal Constitution and a burden on appellant's interstate business to tax appellant in excess of the taxes against intrastate commerce similar to that of appellant.

3. Because the law attacked is unconstitutional and void as denying to appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, for the reason that said law exempts:

(a) Hauls between points not having railroad facilities;

(b) Hauls of agricultural and dairy products, including hauls between farm, market, gin, warehouse or mill, whether [fol. 108] such be hauls in vehicles of the owner or producer or by others;

(c) Agricultural products defined as fruit, live stock, meats, poultry, eggs, lumber, naval stores, household goods and supplies transported to farms for farm purposes;

(d) Hauls by producers, growers and orcharders and poultry, eggs, fish and oysters are exempt; and

(e) Merchants in rural districts.

4. That the law is arbitrary, unconstitutional and void in that in connection with other charges against appellant said appellant is denied the equal protection of the Fourteenth Amendment to the Federal Constitution.

5. The law attacked is unconstitutional because it is part of a general scheme of regulating motor truck transportation for hire, both interstate and intrastate, and is arbitrary, unlawful and prejudicial to appellant engaged in interstate commerce.

The above is a summary statement of the Assignment of Errors and reference to such assignment is here made.

Parts of Record on Which Appellant Intends to Rely

1. The original petition filed in the trial court with Exhibits attached thereto;
2. The opinion of the Supreme Court of the State of Georgia;
3. The assignment of errors filed by appellant in this court;
4. The Judgment of the Superior Court of Fulton County, Georgia;
5. The jurisdictional statement filed with the Appeal; and the order of appeal;
6. This statement.

Respectfully submitted, Edgar Watkins, Edgar Watkins, Jr., Counsel for Appellant, Citizens & Southern National Bank Bldg., Atlanta, Georgia.

[fol. 109] Service of a copy of the above and foregoing statement and all other service waived.

This December 21, 1934.

M. J. Yeomans, Attorney General of Ga.; B. D. Murphy, Asst. Atty. Gen. of Ga., Attorneys for Appellee.

[fol. 110] [File endorsement omitted.]

Endorsed on cover: File No. 39,214. Georgia Supreme Court. Term No. 586. Aero Mayflower Transit Company, appellant, vs. Georgia Public Service Commission et al. Filed December 19, 1934. File No. 586, O. T., 1934.

SUPREME COURT OF THE UNITED STATES.

No. 586.—October Term, 1934.

Aero Mayflower Transit Company, Appellant, *vs.* Georgia Public Service Commission, et al., Appellees.	Appeal from the Supreme Court of the State of Georgia.

[April 29, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

The validity of a statute of Georgia under the Commerce Clause (Article I, § 8, clause 3) and the Fourteenth Amendment of the Constitution of the United States is challenged by the appellant, a private carrier for hire engaged in interstate commerce.

The statute is known as the "Motor-Carrier Act of 1931." Georgia Laws, Ex. Sess. 1931, p. 99. It prescribes a system of regulation for private carriers for hire. Common carriers are subject to the provisions of a separate statute. With exceptions to be stated later, every private carrier operating a motor vehicle in the business of transporting persons or property for hire over any public highway in the state must comply with certain conditions. The carrier must apply for and obtain from the Public Service Commission a certificate of public convenience and necessity (§ 4); must give a bond with adequate security for protection against damage caused by negligence (§ 7); must pay for the certificate a fee of $35 (§ 17); and at the same time and annually thereafter must pay a registration and license fee of $25 (§ 18) for every vehicle so operated. The fees when received by the Comptroller General of the state are to be transmitted to the State Treasurer who is to keep them in a separate fund. This fund is to be subject to the control of the State Highway Department and is to be devoted to the maintenance and repair of the highways of the state.

The exceptions to the foregoing requirements are stated in section 2. The act does not apply to a business conducted exclusively within the incorporated limits of any city or town. Cf. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 366. It does not apply to "cars and trucks hauling people and farm products ex-

clusively between points not having railroad facilities, and not passing through or beyond municipalities having railroad facilities, where not more than seven passengers and/or one and one-half tons of freight are transported." § 2 (1). It does not apply to "motor-vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor-vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer." § 2 (2) Definitions of a "producer" and of "agricultural products," which are contained in the same subdivision, are quoted in the margin.* There are other exceptions in other subdivisions, but they are omitted from this summary, for the attack upon the statute is not aimed at their provisions.

The appellant, a private carrier for hire, is engaged in the transportation of household and office furniture between points in Georgia and other states, and is not within the range of any of the exceptions. It obtained a certificate of convenience and necessity, and paid the statutory fee therefor. It gave approved security for the protection of its customers and the public in the event of injury through negligence. All this it did before beginning the present suit, and in so doing took out of the case any question as to the validity of the statute in respect of those conditions. What it is contesting now is the validity of the requirement that for every motor vehicle it must pay an annual fee of $25 in order to obtain a license. Joining as defendants the Georgia Public Service Commission, the members thereof, and the Comptroller General of the state, it brought this suit to restrain interference with its business by the arrest or prosecution of its drivers or otherwise as a consequence of its refusal to pay the annual fee. The trial court sustained a demurrer and dismissed the complaint.

*"'And the word 'producer' shall include a landlord where the relations of landlord and tenant or landlord and cropper are involved. The phrase 'agricultural products' as used in this Act shall include fruit, livestock, meats, fertilizer, wood, lumber, cotton, and naval stores, household goods and supplies transported to farms for farm purposes, and/or other usual farm and dairy supplies, and including products of grove and/or orchard, and also poultry and eggs, and also fish and oysters, and all country merchants in rural districts who handle poultry and farm products in pursuance to their own business, and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer."

The Supreme Court of Georgia affirmed. 176 S. E. 487. The case is here upon appeal. Judicial Code § 237; 28 U. S. C., § 344.

First. The statute in imposing an annual license fee for the maintenance of the highways does not lay an unlawful burden on interstate commerce.

The fee is moderate in amount; it goes into a fund for the upkeep of highways which carriers must use in the doing of their business; it is exacted without hostility to foreign or interstate transactions, being imposed also upon domestic vehicles operated in like conditions.

Its validity in this aspect is attested by decisions so precisely applicable alike in facts and in principle as to apply a closure to debate. *Clark* v. *Poor*, 274 U. S. 554; *Hicklin* v. *Coney*, 290 U. S. 169, 173; *Sprout* v. *City of South Bend*, 277 U. S. 163, 171; *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, 95; *Continental Baking Co.* v. *Woodring, supra;* cf. *Interstate Transit, Inc.* v. *Lindsey*, 283 U. S. 183.

The appellant urges the objection that its use of roads in Georgia is less than that by other carriers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. Cf. *Clark* v. *Poor, supra; Hicklin* v. *Coney, supra.* One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may.

Second. The exceptions permitted by the statute, in so far as they are challenged by the appellant, do not amount to a denial of the equal protection of the laws.

The statute makes an exception, as we have seen, for the benefit of vehicles engaged in hauling passengers or farm products between points not having railroad facilities, and not passing through or beyond municipalities having such facilities, with certain limitations as to the number of the passengers and the quantity of the freight. This is a reasonable exception. Travelers and farmers without convenient access to a railroad stand in need of other means of transportation. There might be hardship in adding to their burdens. The wear and tear upon a road is not likely to be

heavy when the haul must begin at a town without railroad facilities, must end at a like town, and must not pass through any town which does have them. Not many carriers for hire will be tempted to do business in such neighborhoods exclusively. *Sproles* v. *Binford,* 286 U. S. 374, 394, supplies an apposite analogy.

Another exception, and one that more than any other has drawn the appellant's fire, is for the benefit of motor vehicles engaged exclusively in the transportation of agricultural or dairy products, whether the "vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer." The Supreme Court of Georgia, construing that provision in this case, has said that the final clause, "so long as the title remains in the producer," qualifies the entire exception, as indeed it obviously does. In an earlier case (*Nance* v. *Harrison,* 176 Ga. 674), the same court, familiar doubtless with local conditions, pointed out some of the considerations of policy that underlie the statute. The court observed (p. 682) that "many of the farm products must be brought from remote sections unaccommodated by the better system of roads—in some cases not even by a public road." This might make it necessary to offer some inducement to carriers "in order to insure adequate service in the transportation of such commodities." The court took notice of a common opinion, "well justified by the facts," that the farm lands of the state had been "accustomed to bear an undue proportion of the taxes." The effect of the exception would be to equalize the burden. "Every one knows that as a general rule a tax of this kind finally reaches the consumer of the product, or user of the service; and hence an exemption of carriers of such products is to be taken as an exemption of the products themselves, and not of the carrier." The enumeration of rational bases of distinction was not put forward as exhaustive. The court expressed the belief that others could be added.

We think a classification thus designed to ameliorate the lot of the producers of farm and dairy products is not an arbitrary preference within the meaning and the condemnation of the Fourteenth Amendment. The plight of the Georgia farmer has been pictured by the state court in words already quoted. To free him of fresh burdens might seem to a wise statecraft to be a means whereby to foster agriculture and promote the common good. The

case is very different from *Smith* v. *Cahoon*, 283 U. S. 553. There a Florida statute, similar to this one in many of its provisions, gave relief from its exactions to any transportation company engaged exclusively in the carriage of agricultural, horticultural, dairy or farm products, whether for the producer or for any one else. The attack was not directed, as in the case at hand, to an exemption of a particular class of carriers upon rational grounds of policy from the payment of an annual tax. What was complained of in that case was a release from the obligation imposed upon carriers in general to give a bond or insurance policy in promotion of the public safety. It was with reference to that exemption, not challenged by the appellant here, that the court condemned the statute. "So far as the statute was designed to safeguard the public with respect to the use of the highways, we think that the discrimination it makes between private carriers which are relieved of the necessity of obtaining certificates and giving security, and a carrier such as the appellant, was wholly arbitrary and constituted a violation of the appellant's constitutional right." 283 U. S. at p. 567; cf. *Nance* v. *Harrison, supra*, at p. 681.

Smith v. *Cahoon* has been considered in later cases in this court, and the limits of its holding, clear enough at the beginning, have been brought out in sharp relief. Thus, in *Continental Baking Co.* v. *Woodring, supra*, at p. 371, which came here from the State of Kansas, exemption from various forms of regulation, including the payment of a tax, was accorded to "the transportation of livestock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle." The exemption was upheld. Again, in *Hicklin* v. *Coney, supra*, at p. 175, a statute of South Carolina gave exemption to "farmers or dairymen, hauling dairy or farm products; or lumber haulers engaged in transporting lumber or logs from the forests to the shipping points." The exemption was interpreted by the highest court of the state as limited to cases where the hauling was irregular or occasional and not as a regular business. We upheld the statute as thus interpreted though the effect was to relieve from the filing of a bond.

These cases and others like them (*American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89) are illustrations of the familiar doctrine that a legislature has a wide discretion in the classification of trades and occupations for the purpose of taxation and in the allowance

of exemptions and deductions within reasonable limits. *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232; *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 125; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563, 572; *Stebbins* v. *Riley*, 268 U. S. 137, 142; *Ohio Oil Co.* v. *Conway*, 281 U. S. 146, 159; *State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527. How far it may relieve a special group of carriers from the filing of a bond for the safety of the public, may depend on very different considerations, as, for instance, the extent or regularity of the traffic thus excepted. This will vary from state to state. The excepted carriers in Florida did business, it seems, "between fixed termini or over a regular route." *Smith* v. *Cahoon*, 283 U. S. at p. 566. There is nothing in the present record to advise us as to the extent or regularity of traffic in farm and dairy products by carriers in Georgia. Be that as it may, exemption from a tax stands upon a different footing, though the purpose of the tax is the upkeep of the highway. At such times the legislature may go far in apportioning and classifying to the end that public burdens may be distributed in accordance with its own conception of policy and justice. If its action be not arbitrary, the courts will stand aloof.

We have reserved up to this point the statement of a final objection to the statute now pressed by the appellant. The objection is aimed at the definition of agricultural products, already quoted in this opinion, and especially to the inclusion of household goods and supplies, and to the accompanying words of reference to the business of a country merchant. The clauses in question are awkward and obscure. Apparently household goods and supplies are covered by the exception though moving to the farm, but only then, it seems, if transported to be used for farm purposes and in vehicles devoted to farm uses and no others. Indeed, all the enumerated articles grouped as agricultural are either products of a farm or incidental to its upkeep. Country merchants are exempted when they "handle poultry and farm products in pursuance to their own business, and not for hire." If the handling here referred to has to do with handling in the course of transportation, the exemption has been stated out of over-abundant caution, for carriage not for hire, whether by country merchants or by others, is without the statute altogether.

We do not attempt to pass upon the meaning of the provisions considered in the foregoing paragraph, or upon their validity

under the Fourteenth Amendment, or upon the propriety, if they are to any extent invalid, of severing them from other parts of the statute and upholding what remains. *Dorchy* v. *Kansas*, 264 U. S. 286, 290, 291. Cf. §§ 22 and 29 of the Motor Carrier Act of 1931. No question as to their meaning or validity was raised by the appellant in its petition or complaint. Other clauses of the statute were quoted and assailed as void. These were not even mentioned. No question as to the meaning or validity of these provisions was decided or referred to by the Supreme Court of Georgia. The opinion of that court summarizes the allegations of the complaint, and considers the objections there stated and no others.

This court is a court of review and limits the exercise of its jurisdiction in accordance with its function. *Edward Hines Yellow Pine Trustees* v. *Martin*, 268 U. S. 458, 465; *Wilson* v. *McNamee*, 102 U. S. 572; *Old Jordan Mining and Milling Co.* v. *Société des Mines*, 164 U. S. 261, 265; *Bass R. & G. Ltd.* v. *State Tax Comm.*, 266 U. S. 271, 284, 285. The need of forbearance is commanding when the judgment brought before us comes from a state court and calls for the construction and application of the provisions of a local statute. In such circumstances we are deprived of an important aid to the wise performance of our duties if we proceed to a decision as to matters undetermined and unheeded in the judgment of the state tribunals. *Stephenson* v. *Binford*, 287 U. S. 251, 277.

The decree of the Supreme Court of Georgia is accordingly

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 586

AERO MAYFLOWER TRANSIT COMPANY,
Appellant,

vs.

GEORGIA PUBLIC SERVICE COMMISSION ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

JURISDICTION OF THE SUPREME COURT TO REVIEW UPON APPEAL.

Complying with Rule 12 of the Revised Rules of the Supreme Court of the United States, appellant shows:

In this case there was drawn in question in the trial court and Supreme Court in the State of Georgia the validity of a statute of that State which statute seeks to regulate and tax the interstate business of appellant.

The validity of the State statute being questioned because it constituted a burden on interstate commerce in violation of the commerce clause of the Federal Constitution and a burden on interstate commerce; and

Because such statute further constituted a prejudice and discrimination against appellant to the preference and advantage of appellant's competitors thus denying appellant the equal protection of the laws, in violation of the Fourteenth Amendment to the Federal Constitution; and

The judgment of the trial court affirmed by the Supreme Court of Georgia was in favor of the validity of said statute.

Paragraph "A" of Section 237 of the Judicial Code, as amended (Title 28, Section 344, United States Code), gives jurisdiction to the Supreme Court of the United States on this appeal.

The statute of the State of Georgia, the validity of which is involved herein, is copied in the printed Georgia Laws, Extraordinary Session 1931, beginning at page 99, and a full copy of said statute is attached to the original petition filed in the trial court and marked Exhibit "A". A summary of the pertinent provisions of such statute is as follows:

The title of the Act states, among other things, that it is "An Act to provide the conditions and regulations under which motor carriers for hire are permitted to operate over the highways of this State."

Section 2 of that Act, copied at pages 100 to 102, defines the terms used therein, and, among other definitions, defines motor vehicles and excepts from such definitions: "Cars and trucks hauling people and farm products exclusively between points not having railroad facilities, and not passing through or beyond municipalities having railroad facilities, where not more than seven passengers and/or one and one-half tons of freight are transported."

Excepts and defines "agricultural products" to "include fruit, live stock, meats, fertilizer, wood, lumber, cotton, and naval stores, household goods and supplies transported to farms for farm purposes, and/or other usual farm and

dairy supplies, and including products of grove and/or orchard, and also poultry and eggs, and also fish and oysters."

Excepts therefrom "all country merchants in rural districts who handle poultry and farm products in pursuance to their own business, and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer."

Other sections following Section 2 state the powers of the Georgia Public Service Commission, among which are the right to issue certificates of public convenience and necessity, to prescribe the terms and conditions thereof, to suspend, revoke or change the same, to require that the holder thereof "shall give bond with adequate security" • • • "to secure the owner or person against loss or damage to such freight" for which the motor carrier may be legally liable, and for the "protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents."

The Act further gives the Commission power to fix, change and require the filing of contracts between carriers for hire and their patrons, prohibits discrimination in charges, regulates the issuance of free transportation, authorizes railroad companies to operate motor vehicles for hire, and in Section 18 of the Act requires all motor carriers for hire, within its provisions, to make "payment of a fee of $25.00 for each vehicle to the Comptroller General," such monies so paid shall be kept by the State Treasurer "in a separate fund to be known as the 'Motor Vehicle Fund,' " and, after paying "supervisory expenses," if there is any remaining the same shall be paid to the State Highway Department "for use in maintenance and repair of the highways, as in the discretion of the Highway Board may be directed."

Records are required to be kept of the regulated motor carriers, whose books are subject to inspection, and a violation of any provision of the law is made a punishable misdemeanor. Rebates are prohibited. Safety rules and hours of duty of drivers are prescribed. Foreign residents are required to appoint attorneys for service and conflicting laws are repealed.

The date of the judgment here sought to be reviewed is September 27, 1934, and the date of the application for appeal herein was presented for record November 5, 1934.

Cases showing that this case falls within the jurisdiction of this Court and that appeal lies, are numerous. A leading and controlling case is that of *Smith* v. *Cahoon*, 283 U. S. 553.

Appellant has served upon appellees within five days from the allowance thereof, a copy of the petition for and order allowing the appeal, together with a copy of the assignment of errors and of this statement, and this statement hereby directs the attention of appellees to Paragraph 3 of Rule 12 of the rules of this Court.

WHEREFORE, it is respectfully submitted that jurisdiction in this Court lies and that this appeal is the proper way of invoking the jurisdiction of this Court.

This November 5, 1934.

EDGAR WATKINS,
EDGAR WATKINS, JR.,
Attorneys for Appellant.

Address: Citizens & Southern Bank Building, Atlanta, Ga.

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CHARLES ELMORE CROP

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

NO. 586

AERO MAYFLOWER TRANSIT COMPANY,

APPELLANT,

versus

GEORGIA PUBLIC SERVICE COMMISSION ET AL.

APPELLEES.

BRIEF OF APPELLANT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

AERO MAYFLOWER TRANSIT COMPANY,
APPELLANT,

versus

GEORGIA PUBLIC SERVICE COMMISSION ET AL.

APPELLEES.

BRIEF OF APPELLANT

I

THE OPINION OF THE COURT BELOW

The opinion in this case by the Supreme Court of Georgia rendered on September 15, 1934 is reported under the style of Aero Mayflower Transit Company v. Georgia Public Service Commission, . . . Ga. . . ., 176 S. E. 487, adv. pamphlet.

II

JURISDICTION

The jurisdiction of this Court has been discussed in the statement as to jurisdiction filed in compliance with Rule 12 of your rules. The Supreme Court of Georgia assumed that jurisdiction in equity existed. (See Opinion) R. 48 to 61. The facts stated later show that a substantial Federal question is involved. Jurisdiction on appeal is further supported by decisions of this Court where the jurisdictional facts were similar, as follows:

Smith v. Cahoon, 283 U. S. 553;
Interstate Transit v. Lindsey, 283 U. S. 183;
Sprout v. City of South Bend, 277 U. S. 163; and
Hicklin v. Coney, 290 U. S. 169.

III

STATUTES INVOLVED.

The statute involved is the Motor Carrier Act of 1931, R. 13 to 29, App. 17 to 32; Georgia Laws, 1931, Extraordinary Session, pp. 99–114.

IV

STATEMENT OF THE CASE.

The trial court sustained a demurrer to and dismissed appellant's petition and was affirmed by the Supreme Court of Georgia. Hence, the facts alleged in the petition must be considered as true. The Supreme Court of Georgia decided that appellant's business was that of a "contract carrier" doing an interstate business only and therefore the Motor Common Carrier Act of 1931 was not applicable (R. 48). This statute was attached as Exhibit B to the petition (See R. 32 to 47) and the terms of it are practically identical with the statute here for consideration, the Motor Carrier Act of 1931, R. 13 to 29, App. 17 to 32, Georgia Laws, 1931, Extraordinary Session, pp. 99–114, hereinafter referred to as the Georgia Act.

Appellant is a corporation, organized under the laws of the State of Kentucky, maintaining its principal office in the City of Indianapolis, Indiana. It does a nation-wide interstate business in the transportation of household goods and office furniture. In the conduct of this business its vehicles, both loaded and empty, come into and through the State of Georgia. Appellant owns all of the vehicles it operates, which are of various sizes.

The law under attack in this case is a regulatory law (See the Title of the Act, R. 14, App. 17) and among other things provides that a motor carrier for hire shall obtain a permit (Sec. 4, R. 17, App. 20), register each vehicle used in the State of Georgia and pay a fee of $25.00 for each vehicle coming into the State (Sec. 18, R. 23, App. 26), furnish an indemnity bond or insurance policy for the payment of damages arising from the negligent operation of the vehicles in the State of Georgia (Sec. 7, R. 20, App. 23). The Act authorizes the Commission to prescribe rates (Sec. 8, R. 20, App. 23), and the forms for

keeping records (Sec. 19, R. 24, App. 27) gives the Commission power to regulate the speed and condition of vehicles, hours of service of drivers and other matters concerning the operation of for hire vehicles within the State (Sec. 24, R. 26, App. 29).

Appellant's vehicles come into the State of Georgia at infrequent intervals, while like vehicles operating in intrastate commerce ply the highways of the State continuously in local service. The fee paid by both is the same, $25.00 for each vehicle for a year or any portion thereof. This fee is payable before entering the State of Georgia (Sec. 18, R. 23, App. 26).

During the first half of the year 1933 appellant qualified, under duress, 42 different vehicles in the State of Georgia, paying $25.00 for the registration fee of each. During this period these vehicles operated a total mileage of 19,674 miles (R. 7), while other companies operating intrastate a less number of vehicles operated many times such mileage. As illustrative, Williams Transportation Co., with 7 vehicles qualified, operated 85,652 miles; Hansberger Motor Transportation Co., with 10 vehicles qualified, 338,138 miles; Hoover Motor Express, with 11 vehicles qualified, 729,932 miles; Macon-Valdosta Motor Truck Co., with 2 vehicles qualified, 20, 781 mlies; Georgia Highway Express, with 22 vehicles qualified, 214,557 miles and V. C. Ellington, with 19 vehicles qualified, 223,425 miles. The average of these operators is 15,506 miles per vehicle during the first six months of 1933 and the average per vehicle for appellant was 468 miles per vehicle for the same period of time (R. 7). Each operator enumerated above paid the same fee of $25.00 for each vehicle registered as did appellant. Some of appellant's vehicles were in the State only one time and no vehicle made more than 8 trips into the State during the first eight months of 1933 (R. 6).

The Georgia Act provides that certain vehicles operated for hire are exempt from all the terms of the Act, both regulatory and taxing. Among the exemptions are:

Vehicles hauling one and one-half tons of farm products or less

"between points not having railroad facilities and not passing through or beyond towns having railroad facilities", also vehicles

"engaged exclusively in the transportation of agricultural and/or dairy products, between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer"

and because of the definition of "agricultural products" the exemption also refers to

"fruit, live-stock, meats, poultry, eggs, lumber and naval stores, household goods and supplies transported to farms for farm purposes and/or other usual farm and dairy supplies and including products of growers and/or orchards and also poultry and eggs and also fish and oysters",

and, because of the definition of "producer" it includes:

"A landlord where the relation of landlord and tenant or landlord and cropper are involved",

and, also:

"all other merchants in rural districts who handle poultry and farm products in pursuance to their own business, and not for hire, timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacture". (See Sec. 2 of Act, R. 16, App. 19).

Some of the *for hire* carriers exempted:

1. Motor vehicles engaged solely in transporting school children and teachers to and from public schools.

2. Trucks hauling farm products exclusively between points not having railroad facilities, not hauling more than 1-½ tons of freight.

3. Motor vehicles engaged exclusively in transporting agricultural products (fruit, livestock, fertilizers, naval stores, poultry, eggs, fish, oysters, products of groves or orchards) when the title to such is in the producer or landlord and the load weight is no more than 10,000 pounds between *any* of the following points: farm, market, gin, warehouse or mill.

4. Motor vehicles operating for hire engaged exclusively in transporting household goods, farm and dairy supplies, when the title is in the producer, to a farm for farm purposes.

5. An owner, his agent or employee hauling logs from the forest to mill or primary place of manufacture.

In the years 1931 and 1932 there was collected under Section 18 of the Act $93,932.45. This was $26,167.17 more than was needed for administering the Act and the latter sum was given to the State Highway Board, as is provided by Section 18 of the Act (R. 7). Between January first and November ninth, 1933 there was collected under Section 18 of the Act $48,417.50, of which amount $37,661.52 had been expended in administering the Act and during the remainder of the year 1933 no funds of any consequence will be received and under the budget practically all of the funds collected will be expended in administering the Act for the rest of the year 1933 (R. 7). These facts were in an amendment not printed in the record but were referred to in the court's opinion (R. 51) and are conceded to exist.

V

SPECIFICATION OF ERRORS.

The Supreme Court of Georgia erred in holding:

1. That the statute involved was not unconstitutional as repugnant to the commerce clause of the Federal Constitution and a burden on and an unjust and prejudicial discrimination against such commerce, as Appellant engaged in interstate commerce, was required occasionally and at irregular intervals to pass from, to and through the State of Georgia an average for each vehicle of 936 miles per year, and to pay a tax of $25.00 annually on such vehicles, such law giving the right to other motor vehicles to operate at the same annual tax regularly within said State for annual mileages in excess of thirty thousand miles for each vehicle.

2. That the statute involved is constitutional and not repugnant to the commerce clause of the Federal Constitution as other motor vehicles of the same class operating regularly within said State, under the same statute, and for annual mile-

ages, in many cases, in excess of thirty times the mileage for each vehicle operated by Appellant, paid the same amount, and the State of Georgia received from this tax approximately thirty per cent more than was needed to meet the cost of administering said Regulatory Act.

3. As other trucks hauling one and a half tons of freight or less "between points not having railroad facilities and not passing through or beyond towns having railroad facilities" were and are exempted from the regulations and tax which Appellant was required to pay for a less use than was enjoyed by said exempted trucks, such statutory requirements as applied to Appellant denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, and the Supreme Court of Georgia erred in not holding said statute to be unconstitutional.

4. That said Supreme Court of Georgia erred in not holding the statute assailed, which denied Appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution, unconstitutional when other trucks "engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer" were and are exempted from the regulation thereof.

5. That said Supreme Court of Georgia erred in not holding the statute, which by defined exemptions gives an undue preference and advantage to owners of other trucks hauling exempted products, to the prejudice and disadvantage of Appellant, in violation of the Fourteenth Amendment to the Federal Constitution, unconstitutional when the words "agricultural products" contained in the quotation in the next preceding sub-division of this assignment were in said Act defined to include "fruit, live-stock, meats, poultry, eggs, lumber and naval stores, household goods and supplies transported to farms for farm purposes", and also to include "products of groves and/or orchards and also poultry and eggs and also fish and oysters",

and because the word "producer" was defined in said paragraph to include "all other merchants in rural districts who handled poultry and farm products in pursuance to their own business, and not for hire, timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer."

6. The Supreme Court of Georgia erred in not holding said Act unconstitutional as the Act is arbitrary in that it makes an unnecessary and unreasonable charge in addition to other taxes and provides arbitrary regulations against Appellant in favor of the exempted classes therein named and deprives Appellant of the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

7. The Supreme Court of Georgia erred in not holding said Act to be unconstitutional because of the method of regulating and taxing, and because of the exemptions granted from both taxes and regulations, such Act constituting a scheme of regulating motor truck transportation for hire, both interstate and intrastate, which, taken as a whole, is arbitrary, unreasonable and prejudicial to Appellant, such scheme being in all its elements and as a whole unconstitutional as a burden on interstate commerce, and as a regulation of interstate commerce in violation of the commerce clause of the Federal Government and a violation of the Fourteenth Amendment to the Constitution of the United States in that it denies Appellant the equal protection of the laws.

VI

SUMMARY OF ARGUMENT.

POINT A. The Motor Carrier Act of 1931 is unconstitutional and violates the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States because the exemptions in Section 2 thereof result in arbitrary and unreasonable discrimination against appellant.

POINT B. The flat fee of $25.00 per vehicle prescribed by Section 18 of the Motor Carrier Act of 1931 is unconstitutional as to appellant, operating in interstate

commerce, because the fee creates an unreasonable charge for the police regulation of the interstate vehicles of plaintiff and is a direct, substantial, unreasonable and discriminatory burden upon interstate commerce in violation of the commerce clause of the Constitution of the United States.

VII

ARGUMENT AND AUTHORITIES.

The Exemption from the Act of Certain for Hire Carriers is Unreasonable and Makes the Act Unconstitutional.

POINT A.

The exemptions quoted supra, pp. 3 and 4, briefly mean that motor vehicles for hire engaged exclusively in hauling farm products, supplies and related articles, title to which is in the producer, within the weight limit, between any farm, market, gin, warehouse or mill are relieved of the supervision, taxation and control of the Public Service Commission. The effect of the exemption quoted is to exempt from the necessity of obtaining a permit, paying fees, providing insurance for the protection of the public, keeping records and many other regulations for hire vehicles which are of the class described above. The exemption is not based on the ownership of the vehicle but is based upon the character and the ownership of the articles transported. A for hire carrier hauling household goods and supplies "*** to farms for farm purposes***" would be exempt, while appellant, who hauls nothing but household goods to and from homes would not be exempt.

In *Smith v. Cahoon*, 283 U. S. 553, this Court held a statute identical in effect and practically identical in verbiage[1] uncon-

[1]In the Sixtieth Report of the Georgia Public Service Commission (1932) at pages 8-9, the Commission said:

"The *Smith v. Cahoon* case referred to held the Florida Act unconstitutional upon the further ground that the exemptions granted to carriers engaged exclusively in transporting agricultural, horticultural, dairy or other farm products, etc., from its application constituted an unconstitutional discrimination between carriers. Attention is called to the fact that this same exemption exists in the Georgia 'Motor Carrier Act of 1931' and, while our courts have never passed upon it, the Act has been attacked as being unconstitutional in several suits filed in this State. Unless the Supreme Court of Georgia should hold that the scheme of the 'Motor Carrier Act of 1931' is esentially different from that of the Florida Act, it would be compelled to hold the 'Motor Carrier Act of 1931' unconstitutional under the ruling in the case of *Smith v. Cahoon*."

stitutional and at page 567 of the opinion said:

> "But in establishing such a regulation, there does not appear to be the slightest justification for making a distinction between those who carry for hire farm products, or milk or butter, or fish or oysters, and those who carry for hire bread or sugar, or tea or coffee, or groceries in general, or other useful commodities. So far as the statute was designed to safeguard the public with respect to the use of the highways, we think that the discrimination it makes between the private carriers which are relieved of the necessity of obtaining certificates and giving security, and a carrier such as the appellant, was wholly arbitrary and constituted a violation of the appellant's constitutional right."

The Supreme Court of Georgia, in discussing this question referred to the *Cahoon Case* cited supra, stated that it was distinguishable and referred to three cases as controlling, namely:

> *Nance v. Harrison*, 176 Ga. 674;
> *Continental Baking Co. v. Woodring*, 286 U. S. 352; and
> *Hicklin v. Coney*, 290 U. S. 169 (R. 60–61).

These cases, we contend, support our position.

There are only two slight differences between the exemptions in the Florida law condemned in the *Cahoon Case* and those in the Georgia statute.

The weight of the load of farm products in the Georgia statute is limited to 10,000 pounds, whereas all loads in Georgia are limited to 12,500 pounds (R. 29, 30).

The second is that the title must remain in the producer under the Georgia statute for the exemption to be effective. However, the exemption does not exempt the producer but exempts any carrier, for hire or otherwise, from the provisions of the act when he is hauling farm products when the title to such is in the producer, the landlord or a country merchant. Regardless of the difference in words the exemption in the Georgia statute, as in the Florida Act, is based upon the nature of the goods carried and such cannot be justified.

A general demurrer was sustained to appellant's petition. No evidence was permitted concerning the various classes exempted, and in such cases grave constitutional questions should not be decided without definite information concerning the extent of the exemptions. (See Borden's Farm Products Co. v. Baldwin, decided December 3, 1934, 79 L. ed. adv. pamph. 130, 135, 137.)

It is seen by comparing the Motor Common Carrier Act of 1931 (R. 32 to 47) with the Motor Carrier Act of 1931 (R. 13 to 29) that the provisions are practically identical.

Nance v. Harrison, the first case referred to above, involved a mileage tax on for hire operators and not a regulatory statute constituting a scheme of supervising and controlling motor carriers as does the statute here under consideration. In that case the Supreme Court of Georgia recognized the doctrine of *Smith v. Cahoon*, supra, but decided it was applicable only to a regulatory statute such as is involved here where the court attempted to distinguish *Smith v. Cahoon*, supra.

In *Continental Baking Co. v. Woodring*, supra, this court had under consideration a law of the State of Kansas regulating all motor vehicles using the public highways for transporting persons or property. The Act did not apply to "the transportation of live-stock and farm products to market 'by the owner thereof or supplies for his own use in his own motor vehicle.'" (P. 358).

This feature distinguishes this case from that of *Smith v. Cahoon*, supra, as Mr. Chief Justice Hughes stated: "The statute does not attempt to impose an arbitrary discrimination between carriers who transport property for hire, or compensation, with respect to the class of products they carry. The exemption runs only to one who is carrying his own livestock and farm products to market or supplies for his own use in his own motor vehicle." (P. 372).

The case of *Hicklin v. Coney*, supra, came to this court from the Supreme Court of South Carolina, where the Railroad Commission of that State had brought an original suit to enforce the statutes regulating transportation by motor vehicles. The Supreme Court of South Carolina construed the exemptions and this court, in its opinion, at page 175, quoted:

" '***the exemption here is further limited by the fact that it can apply only to one whose principal business is that of a farmer or dairyman and not to one merely incidentally engaged in farming or dairying.' " and said: "Further, in its pleading, the Railroad Commission averred that it had uniformly construed the statute 'as exempting farmers and dairymen only when hauling their own products, or only when hauling them occasionally and not as a regular business' and had adopted a formal regulation to that effect."

Thus it is seen that this Court has always recognized the difference between the exemption of a farmer hauling his own goods in his own vehicle and a motor carrier, private, public or for hire, engaged exclusively in handling farm products. This court, in *Smith v. Cahoon*, supra, definitely decided that the latter exemption rendered such a statute unconstitutional in its entirety and that case was reaffirmed in both of the decisions heretofore referred to. The Georgia statute here involved is of the latter type and is therefore unconstitutional under the decisions referred to.

In *Smith v. Cahoon* this Court held that the entire Florida Act was unconstitutional, although the Act provided:"§18. That if any of its provisions were held to be unconstitutional, the validity of the remaining portions should remain unaffected." (P. 563), which is similar to Section 29 of the Georgia Act (R. 27, App. 31).

An elimination of the unconstitutional exemptions in Section 2 of the Georgia Act can not be made without bringing the exempted operators within the provisions of the Act and making them subject to all of its terms. Such a result is not possible as the Act stands and such construction is not permissible as it would be in direct contradiction of the legislative intent as expressed in the exemptions. The situation in this case is opposite to that which would arise where the holding of a part of an Act unconstitutional would take certain classes without the provisions of the Act. In the latter case the other parts of the Act might be upheld because the legislative intent was to make all parties subject to the Act and the elimination of some would leave the Act applicable to the remaining. However, such a decision is not possible when the removing of an unconstitutional section brings exempted persons within the provisions of the Act.

POINT B.

The Taxing Feature of the Act Creates an Undue, Unreasonable and Discriminatory Burden on Appellant, an Interstate Operator, and is therefore Unconstitutional.

Section 30 of the Act (R. 28, App. 30), shows the duties of the Public Service Commission of Georgia concerning interstate operators of motor vehicles for hire. These duties are more limited than the regulations of intrastate operators and thus require less costly regulation. The Commission, as to intrastate operators, must consider convenience and necessity before granting a certificate, must control rates and schedules and the relationship between carrier and shipper, as well as protect the public by safety regulations. As to interstate operators, the Commission acts only to protect the public by safety regulations, yet the fee of $25.00 per vehicle is applicable to both.

While in 1933 the Public Service Commission spent practically all of the funds collected for regulation, in 1931 and 1932 it spent only approximately 72 per cent of such amount (R. 7). In addition to this burden, there is a gasoline tax, the proceeds of which go for highway purposes (Georgia Laws, 1927, p. 104 et seq.) as amended by Georgia Laws, 1929, p. 99 et seq.); a mileage tax Act applicable to for hire carriers (Georgia Motor Vehicles Carrier for Hire Tax, Georgia Laws, Extraordinary Session 1931, p. 63, et seq. as amended Georgia Laws 1931, p. 90); as well as the regular motor vehicle license tax which appellant and other interstate for hire operators must pay (Georgia Laws, 1927, pp. 226 et seq.)*

There are many decisions of this Court establishing the principle that when a State levies a tax on interstate commerce the tax must be sustained under the police power of the State, if at all.

Smith v. The State of Alabama, 124 U. S. 463;
N. C. & St. L. Ry. Co. v. State of Alabama, 128 U. S. 36;
Hendrick v. Maryland, 235 U. S. 610;
Kane v. New Jersey, 242 U. S. 160; and
Morris v. Duby, 274 U. S. 135.

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*This tax was reduced by executive order to $3.00 per vehicle and the Legislature affirmed this action and continued the lower tax on February 1, 1935.

Such a license fee, to be sustained, must be incident to a regulatory scheme which is valid and must be "no more than was reasonably required for such a purpose". *Sprout v. City of South Bend*, 277 U. S. 163 at 169. The tax of $25.00 per vehicle is more than is necessary to administer the regulation of interstate operators, if that tax is sufficient to administer the more complex and numerous regulations on intrastate operators, and therefore must fail. It is also shown to have raised in two years more funds than were necessary to regulate both classes of operators and such was contemplated by the Act (Sec. 18, R. 24, App. 27).

Another principle announced in *Sprout v. City of South Bend*, supra, is applicable to the Georgia Act, and is: "A flat tax, substantial in amount and the same for busses plying the streets continuously in local service and for busses making, as do many interstate busses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways." (P. 170).

In that case the tax held invalid was a flat annual tax of $50.00 per vehicle.

It is true that this Act is not designed as one to meet the cost or value of the use of the highways, but is there any difference between measuring the cost of using the highways and the cost of regulating vehicles as to safety measures using the highways? Would not the cost of both rise with increased use and fall with less use? The principle above quoted is equally applicable to a tax to defray the cost of regulating as it is to a tax to pay the cost or the value of the use of the highways.

Here appellant, with 42 vehicles operating for six months, traveled 19,674 miles in the State of Georgia. Thus the State of Georgia received on an average $25.00 for regulating appellant's vehicles as to safety regulations alone, for 468 miles of travel or, 5-⅓ cents per mile, while during the same period on certain typical intrastate operators there was collected for regulating, not only as to safety matters but as to rates, schedules and other matters between the carrier and the shipper,

$25.00 per truck for over 15,506 miles of travel, or less than .2 of a cent per mile (R. 7). These facts support the principle that such a flat annual tax per vehicle can not be reasonable and free from discrimination when applied to interstate commerce. In *Interstate Transit v. Lindsey*, 283 U. S. 183, the Court said at p. 190:

> "Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. Clark v. Poor, 274 U. S. 554, supra. In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the state. *** Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses."

In that case the flat annual tax was on a graduated scale based on carrying capacity but the principle is the same as here as neither "rise with an increase of miles travelled" and hence "there is no sufficient relation between the measure employed and the extent or manner of use" to justify the charge.

The cases usually cited as opposed to these principles and which were referred to in the opinion of the Supreme Court of Georgia are distinguishable and support rather than oppose the principles. While *Clark v. Poor*, 274 U. S. 554, decided that a State could regulate to a certain extent interstate vehicles operating for hire and exact a license fee to defray the cost of regulating. The license fee there was "for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the same" (P. 556), there were no facts there concerning the burden nor the distribution of the burden as between interstate and intrastate operators in connection with the regulations upon each, and there was "no suggestion that the tax discriminates against interstate commerce." (P. 556).

In *Hendrick v. Maryland*, 235 U. S. 610, and *Kane v. New Jersey*, 242 U. S. 160, this Court considered motor vehicle registration laws with safety provisions and a small fee. It was held that such could be required of automobile owners from other States as well as resident owners. It is clearly within the police power of a State to protect its citizens from injury and require the registration of vehicles so if injury occurs the persons responsible may be ascertained, but in the *Hendrick Case*, supra, the principle we insist applicable here was stated: "so long as they (the taxes) are reasonable and are fixed according to some uniform, fair and practical standard, they constitute no burden on interstate commerce" (P. 624), and in neither case were there any facts from which the Court could ascertain the actual burden or the distribution of the burden, while here the facts show that an interstate operator pays 30 times as much as some intrastate operators to defray the cost of less complex regulations.

The South Carolina statute involved in *Hicklin v. Coney*, supra, was considered upon the face of the statute as the case was one of original jurisdiction in the Supreme Court of South Carolina. The only discussion of the taxing feature was because, "appellant insists that an undue burden is placed upon interstate commerce because the license fees are based on the 'carrying capacity' of the vehicles." (P. 173). No question of discrimination was raised and no facts were presented, so the question here was not considered nor decided.

In *Continental Baking Company v. Woodring*, 286 U. S. 352, a law was involved which points the way for levying a reasonable and nondiscriminatory tax on interstate operators. There the tax was based on a charge per ton mile and this court said: "No impropriety in assessment or in collection as to these appellants, or denial of remedy, is disclosed. Nor is the amount of the tax, which the State could lay in its discretion for the lawful purposes declared, shown to be unreasonable." (P. 367). This is a fair method of taxing for use of the highways as it "rises with miles traveled".

Another method of defraying the cost of regulation free from unjust discrimination is the method approved by this court in *Interstate Buses Corp. v. Blodgett*, 276 U. S. 245, which is a

straight mileage tax. Even under a mileage tax if there are two schemes of regulation, the more expensive should bear the greater tax.

Here the facts show definitely a prejudicial discrimination against appellant for the reasons:

(1) The tax is the same on intrastate and interstate operators although the scheme of regulation of the intrastate operator is more excessive and complex than that upon interstate operators.

(2) The Act contemplates the collection of more funds than necessary to defray the cost of regulation by providing a diversion of the excess to the highway funds and the fact is that more than necessary was collected.

(3) The cost of regulation, like the cost of use of the highways, is in proportion to the use, while the tax for that purpose places the cost to appellant of regulation 30 times as great as of typical intrastate operators.

CONCLUSION.

It is therefore respectfully submitted that the decision of the Supreme Court of Georgia should be reversed and the Motor Carrier Act of 1931 be held unconstitutional as contended.

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APPENDIX

GEORGIA "MOTOR CARRIER ACT OF 1931"

AN ACT

To provide the conditions and regulations under which motor carriers for hire are permitted to operate over the highways of this State; to regulate the business of transporting for hire persons and property by motor vehicles on the public highways of this State; to define Motor Carriers and to subject them to the jurisdiction and regulatory powers of the Georgia Public Service Commission; to prohibit the operation of vehicles by Motor Carriers unless they obtain a certificate of public necessity and convenience and to prescribe the conditions on which such certificates shall be issued and continued in force and the fees to be paid therefor; to authorize the Commission to prescribe just and reasonable rules, rates, fares and charges of motor carriers and the form, filing and publication of tariffs therefor; to provide rules and regulations for contract or private carriers for hire, to provide that the provisions of this Act shall extend to such contract or private carriers for hire, to define casual or occasional carriers; to prohibit motor carriers from charging or receiving greater, less or different compensation from that prescribed; to prevent unjust discriminations; to make provision with reference to proceedings before the the Commission and review of its orders; to make provisions concerning the carrying of white and colored passengers, the carrying of baggage, discontinuance of operations; to give the Commission power to require Motor Carriers to locate, erect, use or lease depots, to fix schedules, or the number, kind or character of equipment used; to authorize railroad companies to operate on the Public Highways as Motor Carriers and to own stock in corporations organized or operating as Motor Carriers; to fix the venue of suits against Motor Carriers; to prescribe registration and license fees to be paid by Motor Carriers; to prohibit any political subdivision of the State from imposing registration or license fees on any Motor Carrier licensed under this Act; to prescribe punishment for violations of this Act and of the orders of the Commission; to authorize the Commission to employ

such persons as may be necessary for the enforcement of this Act; to require interstate Motor Carriers to register with the Commission the routes and vehicles used by them in this State; to require them to give certain bonds or indemnity insurance; Pay an annual license fee; and to appoint an Attorney in Fact for service of suits against them for personal injuries; and to fix the venue of such suits; to authorize injunction suits against Motor Carriers who operate without certificates or after certificate is revoked; to repeal the Act of the General Assembly approved August 29th, 1929, designated by Section 1 of such Act as "Motor Carrier Act of 1929"; to make provision for and to prescribe certain rules and regulations for the safety of passengers, members of the public and employees; to require Motor Carriers to keep records and to prescribe the books and forms of Account to be kept by them and require that same be kept open to inspection; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same.

Section 1

This Act may be cited as "Motor Carrier Act of 1931." The provisions of this Act are intended to state the conditions and regulations under which motor carriers for hire, whether or not common carriers, are permitted to operate over the highways of this State.

Section 2

When used in this Act, unless expressly stated otherwise—

(a) The term "person" shall include an individual, a firm, co-partnership, corporation, company, an association or a joint stock association.

(b) The term "Commission" means the Georgia Public Service Commission.

(c) The term "Motor Carrier" means every person owning, controlling, operating or managing any motor propelled vehicle, (and the lessees, or receivers or trustees thereof, appointed by any court whatsoever) used in the business of transporting

persons or property for hire over any public highway in this State and not operated exclusively within the incorporated limits of any city or town; provided that the term "Motor Carrier" as used in this Act shall not include and this Act shall not apply to:

(1) Motor vehicles engaged solely in transporting school children and teachers to and from public schools. And cars and trucks hauling people, and farm products exclusively between points not having railroad facilities, and not passing through or beyond municipalities having railroad facilities where not more than seven passengers and/or one and one-half tons of freight are transported.

(2) Motor vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not so long as the title remains in the producer. And the word "producer" shall include a landlord where the relation of landlord and tenant or landlord and cropper are involved. The phrase "agricultural products" as used in this Act shall include fruit, livestock, meats, fertilizer, wood, lumber, cotton, and naval stores, household goods and supplies transported to farms for farm purposes and/or other usual farm and dairy supplies, and including products of groves and/or orchards, and also poultry and eggs, and also fish and oysters, and all country merchants in rural districts who handle poultry and farm products in pursuance to their own business and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacture.

(3) Taxicabs, or motor trucks of baggage transfer companies, and motor trucks or railway express companies, and/or motor trucks engaged exclusively in local draying, which are operated principally within the incorporated limits of cities or towns but which may in the prosecution of their regular business occasionally go beyond the limits of the city or town in

which they operate, and which do not operate between such city or town and fixed termini outside of such city or town limits.

(4) Hotel passenger or baggage motor vehicles when used exclusively for its patrons and employees.

(5) Motor trucks of railway companies which perform a pick-up and delivery service in connection with their freight train service, between their freight terminals and points not more than five miles distance, when either or both the freight terminal or such points are outside the limits of an incorporated city or town.

(6) R. F. D. carriers or star route carriers engaged in carrying the U. S. Mail and who are permitted to carry passengers, not exceeding five, while actually engaged in transporting U. S. Mail over such route.

(7) Motor vehicles owned and operated exclusively by the United States, this State, or any sub-division thereof.

(d) The term "Public Highway" means every public street, road highway, or thoroughfare of any kind in this State used by the public.

(e) The term "Certificate" means a Certificate of Public Convenience and Necessity issued under this Act.

Section 3

The Commission is hereby vested with power to regulate the business of any person engaged in the transportation of persons or property either or both, for hire, by motor vehicle on any public highway in this State.

Section 4

(a) No motor carrier shall, after this Act goes into effect, operate without first obtaining from the Commission, after hearing under the provisions of this Act, a certificate of Public Convenience and Necessity pursuant to findings to the effect that the public interest requires such operation.

(b) The Commission may issue the Certificate prayed for or issue it for the partial exercise of the privilege sought; and

may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public may require.

(c) All Certificates of Public Convenience and Necessity granted under the Motor Carrier Act of 1929 shall continue in force and effect until revoked by the Commission or surrendered by the holders.

(d) The Commission may at any time, after notice and opportunity to be heard, suspended, revoked, alter or amend any certificate issued under this Act or the Motor Carrier Act of 1929, if it shall be made to appear that the holder of the certificate has wilfully violated or refused to observe any of the orders, rules or regulations prescribed by the Commission or any provision of this Act, or any other law of this State regulating and/or taxing motor vehicles, or if, in the opinion of the Commission, the holder of such certificate was not furnishing adequate service or it is no longer compatible with the public interest to continue said certificate in force, or the continuance of said certificate is not in conformity with the spirit and purpose of this Act.

(e) Any such certificate may be transferred or hypothecated upon application to and approval by the commission and not otherwise. Provided no transfer hereunder shall be permitted so as to destroy competition or create monopoly.

(f) Nothing in this Act is to be construed as requring a private carrier to become a common carrier.

(g) In determining whether such certificate of Public Convenience and Necessity shall be granted, the Commission, among other things, must consider the following:

(1) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs;

(2) The volume of existing traffic over such route and whether such traffic and that reasonably to be anticipated in the future can support already existing transportation agencies and also the applicant;

(3) Financial ability of the applicant to furnish adequate, continuous and uninterrupted service for the year round;

(4) The effect, expense and burden on the public highways, including bridges and on the traffic, both private and common carrier, thereon;

(5) The effect on existing transportation revenues and service of all kinds, and particularly whether the granting of such certificate will or may seriously impair essential existing public service.

Section 5

The Commission shall adopt rules prescribing the manner and form in which motor carrier shall apply for Certificates required by this Section. Among the rules adopted there shall be rules as follows:

(a) Application shall be in writing, under oath.

(b) Shall contain full information concerning the ownership, financial condition, equipment to be used including the size, weight and capacity of each vehicle to be used, and physical property of the applicant.

(c) The complete route or routes over which the applicant desires to operate.

(d) The proposed time schedule.

(e) Applicant agrees to observe all rates, schedule or schedules and classifications of the equipment, as prescribed by the Commission.

(f) All existing transportation in the territory proposed to be served and wherein the public needs additional service, and why.

(g) Any such other or additional information as the Commission may order or require.

Section 6

The Commission, upon the filing of a petition for certificate of Convenience and Necessity, shall fix a time and place for hearing thereon. The Commission shall cause a copy of the petition and notice of hearing to be served at least twenty days before the hearing upon every common carrier of passengers or property for hire, including railroads operating and render-

ing service in the territory proposed to be served by the petitioner or applicant for a Certificate of Convenience and Necessity to operate in the same territory, and upon the State Highway Commission.

Section 7.

No certificate shall be issued or continued in operation unless the holder thereof shall give bond with adequate security, for the protection in case of passenger vehicles, of the passengers and baggage carried, and of the public, against injury proximately caused by the negligence of such motor carrier, its servants or agents, and in cases of vehicles transporting freight, to secure the owner or person entitled to recover therefor against loss or damage to such freight for which the motor carrier may be legally liable, and for the protection of the public against injuries proximately caused by the negligence of such motor carrier, its servants or agents.

The Commission shall approve, determine and fix the amount of such bonds, and shall prescribe the provisions and limitations thereof, and such bonds shall be for the benefit of and subject to suit or action thereon by any person who shall sustain actionable injury or loss protected thereby. The Commission may, in its discretion, allow the holder of such certificate to file in lieu of such bond a policy of indemnity insurance in some indemnity insurance company authorized to do business in the State of Georgia, which policy must substantially conform to all of the provisions hereof relating to bonds and must likewise be approved by the Commission. The Commission shall have power to permit self-insurance in lieu of a bond or policy of indemnity insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

Section 8

The Commission shall prescribe just and reasonable rates, fares and charges for transportation by motor carriers, of passengers, baggage and property and for all services rendered by motor carriers in connection therewith, and the tariffs therefor shall be in such form, and shall be filed and published in such manner and on such notice as the Commission may prescribe and shall be subject to change on such notice and in

such manner as the Commission may prescribe. The provisions of this Section and the succeeding Section 9 shall apply to motor carriers who do not pursue the business of a common carrier, but operate as contract or private carriers for hire and the rates, fares and charges prescribed for such contract or private carriers shall be the same as those prescribed for common carriers by motor vehicle, and no such private or contract carrier shall contract to carry at a greater or less rate than prescribed by the Commission and all such contracts are hereby declared unlawful. Copies of all contracts of private or contract carriers with their patrons shall be filed with the Commission. All other provisions of this Act, except where expressly stated otherwise shall extend to and apply to such contract or private carriers. Provided that casual or occasional carriers shall not be construed to come under the provisions of Sections 8 or 9 of this Act, and the Public Service Commission shall define what are casual or occasional carriers.

Section 9

No motor carrier shall charge, demand, collect or receive a greater or less or different compensation for the transportation of passengers and property or for any service rendered in connection therewith than the rates, fares and charges prescribed or approved by order of the Commission; nor shall any motor carrier unjustly discriminate against any person in its rates, fares, charges of service, but the Commission may prescribe by general order to what persons motor carriers may issue passes or free transportation, and may prescribe upon the same terms and conditions as now apply to railroad carriers reduced rates for special occasions; to fix and prescribe rules and schedules.

Section 10

Motor Carriers may, as an incident to their business, carry mail, parcels and packages under such rules and regulations as may be prescribed by the Commission.

Section 11

Motor carriers may confine themselves to carrying either white or colored passengers, or they may provide different motor vehicles for carrying white and colored passengers; and

they may carry white and colored passengers in the same vehicle but only under such conditions of separation of the races as the Commission may prescribe.

Section 12

Motor carriers shall not be compelled to carry baggage of passengers, except hand baggage; the character, amount and size of which the motor carrier may limit by its rules and regulations, subject to the approval of the Commission, and the Commission may by rule or regulation limit the amount of the liability of the motor carrier therefor. If a motor carrier shall elect to carry the personal baggage of passengers (other than hand baggage), the Commission shall prescribe just and reasonable rates therefor, and such other rules and regulations with respect thereto as may be reasonable and just, and may by rule or regulation limit the amount of the liability of the motor carrier therefor.

Section 13

Action may be maintained against any corporation operating under this Act in any county in this State where any accident or other liability arises and where there is no agent of such corporation against whom suit is brought in the County where the right of action arises; service in such case may be perfected by serving the party defendant and/or an agent thereof with a second original where such defendant and/or agent thereof may be located.

Section 14

A motor carrier shall have the right to discontinue its whole service on any route upon thirty days' published notice to be prescribed by the Commission and thereupon its certificate therefor shall be cancelled. A motor carrier shall have the right to discontinue any part of its service on any route upon thirty days' published notice, subject, however, to the right of the Commission to withdraw its Certificate for such route, if, in the opinion of the Commission, such diminished service is not adequate or any longer compatible with the public interest.

Section 15

Railroad companies operating in this State are hereby authorized to operate motor vehicles for hire upon highways, provided they obtain from the Commission a certificate under this Act, and provided further that they shall be as to said motor vehicles motor carriers under this Act and subject to all the provisions of this Act; and railroad companies operating in this State are also authorized to own the whole or any part of the capital stock of a corporation or corporations organized or operating as a motor carrier. But no railroad company, nor any company whose stock is owned by a railroad company shall be granted a Certificate of Public Convenience and Necessity without proof such as would be required by an independent motor carrier.

Section 16

In all respects in which the Commission has power and authority under this Act, proceedings may be instituted, complaints made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, and any final order may be reviewed in any court of competent jurisdiction of this State under the conditions and subject to the limitations as now prescribed by law as relates to the Georgia Public Service Commission.

Section 17

A fee of thirty-five ($35.00) dollars shall be charged for the issue of every certificate of convenience and necessity, and a fee of seven and 50/100 ($7.50) dollars for the transfer of a certificate, which shall be paid to the Commission when the Commission has approved the application for the certificate and no certificate shall issue until the said fee of $35.00 has been paid.

Section 18

Every motor carrier shall as soon as a certificate is issued and annually on or before each succeeding January first as long as such certificate remains in force, make application to the Commission for registration and license of all motor vehicles to be operated under said certificate and upon payment of

a fee of $25.00 for each vehicle to the Comptroller-General shall be entitled to register the same and receive a license thereof.

The sum or sums derived herein from the issuance and transfer of Certificates of Convenience and Necessity by the Comptroller-General, shall be paid to the State Treasurer who shall keep such sums thus paid to him in a separate fund to be known as the Motor Vehicle Fund. From such funds thus derived the State Treasurer shall, upon proper warrant from the Governor, pay all the expenses and salaries of every character as due and provided herein. Such sum or sums as may be left after such salaries and supervisory expenses have been paid, as may remain unexpended on the first day of January each year, shall be paid to the State Highway Department for use in maintenance and repair of the highways, as in the discretion of the Highway Board may be directed.

Section 19

(a) Motor carriers shall keep records upon forms prescribed by the Commission of all motor vehicles and trailers used during the current month. On or before the tenth of the month following they shall file under oath with the Commission upon forms prescribed by the Commission summaries of their daily records which will show the capacity of their motor vehicles and trailers and the miles operated by each motor vehicle and trailer during the preceding month, together with such other information as the Commission may require. Such daily records shall be filed and preserved by the Commission for a period of at least two years.

(b) The Commission shall prescribe the books and the forms of account to be kept by the holders of the certificates which shall be preserved for such reasonable time as may be prescribed by the Commission. The books and records of every certificate holder shall be at all times open to the inspection of said Commission or any agent appointed by it for such purpose. The Commission shall have the power to cancel any certificate of necessity and convenience theretofore issued to any motor carrier for failure to keep the books and records as prescribed by the Commission or for failure to comply with any lawful rule or regulation of the Commission, but no cer-

tificate issued by the Commission hereunder shall be revoked upon such grounds without notice and hearing to such motor carrier under such rules and regulations as the Commission may prescribe therefor. The Commission shall have the power to examine the books and records of all motor carriers to whom it has granted certificates to operate hereunder and to examine under oath the officers and agents of any motor carrier with respect thereto.

Section 20

(a) Every officer, agent or employee of any corporation and every person who violates or fails to comply with the provisions of this Act (except the provisions relating to the payment of fees or taxes) or any order, rule or regulation of the Commission, or who procures, aids or abets therein, is guilty of a misdemeanor, and upon conviction shall be punished as for a misdemeanor.

(b) Every officer, agent or employee of any corporation and every other person who knowingly accepts or receives any rebate or drawback from the rates, fares or charges established or approved by the Commission for motor carriers or who procures ,aids or abets therein or who uses or accepts from a motor carrier any free pass or free transportation, not authorized or permitted by law or by the orders, rules or regulations of the Commission, or who procures, aids or abets therein, shall be guilty of a misdemeanor and upon conviction shall be punished as for a misdemeanor.

(c) The possession of goods, wares or merchandise loaded on a motor vehicle consigned to any person, firm or corporation, being transported or having been transported over the highways in Georgia, without the authority of a certificate for so doing having been issued by the Georgia Public Service Commission, shall be prima facie evidence that such one so transporting such goods, wares, or merchandise is with intent and in violation of the law regulating the transportation of persons and property over the highways in Georgia.

Section 21

The Commission is hereby authorized to employ such persons as may be necessary in the discretion of the Commission,

for the proper enforcement of the provisions of this Act, the salaries for such employees to be fixed by the Commission. The traveling expenses of the Commission and its employees incurred in the performance of this Act shall be paid as similar expenses of the Commission, out of the Motor Vehicle fund.

Section 22

Each Section of this Act and each part thereof is hereby declared to be independent sections and parts of sections, and the holding of any section or any part of a section to be void or ineffective for any cause shall not affect any other section of this Act or part of a section.

Section 23

This Act shall be cumulative to other laws regulating the use of motor vehicles on the highways.

Section 24

The Commission shall have the authority to promulgate rules designed to promote safety, and any such safety rules promulgated or deemed necessary by such Commission shall include the following:

(a) Every motor unit and all parts thereof shall be maintained in a safe condition at all times. And the lights and brakes and equipment shall meet such safety requirements as the Commission shall from time to time promulgate.

(b) Every driver employed by a motor carrier shall be at least eighteen years of age of temperate habits and good moral character, and shall be fully competent to operate the motor vehicle under his charge.

(c) Accidents arising from or in connection with the operation of motor carriers shall be reported to the Commission in such detail and in such manner as the Commission may require.

(d) The Commission shall require and every motor carrier shall have attached to each unit or vehicle such distinctive marking or tags as shall be adopted by the Commission.

Section 25

It shall be unlawful for any motor carrier, its officers or agents, subject to this Act to require or permit any driver to be or remain on duty for a longer period than ten consecutive hours, and whenever any such driver shall have been continuously on duty for ten hours he shall be relieved and not required or permitted to go on duty until he has had at least ten consecutive hours off duty, except than in cases of unforseen emergency a driver may remain on duty not in excess of twelve hours or for such times as will enable him to complete his regular run.

Section 26

The Commission is hereby authorized to adopt, after reasonable notice and hearing thereon, such rules and orders as it may deem necessary in the enforcement of the provisions of this Act. Such rules and orders so approved by the Commission shall have the same dignity and standing as if such rules and orders were specifically provided in this Act.

Section 27

When a petition for a Certificate of Public Convenience and Necessity has been in whole or in part denied by the Commission or has been granted by the Commission and the order of the Commission granting same has been quashed or set aside by a court of complete jurisdiction, a new application by the same petitioner or applicant therefor shall not be again considered by the Commission within three months from the date of the order denying the same or the judgment of the court quashing or setting aside the order.

Section 28

Nothing in this or any previous Act of the General Assembly shall ever be construed to vest in the owner or holder or assignee of any Certificate of Public Convenience and Necessity any vested right to use the Public Roads of this State and shall never be construed to give to any Motor Carrier for hire any perpetual franchise over such Public Roads. Certificates of Public Convenience and Necessity issued under the provisions of this Act or under the provisions of the Motor

Carrier Act of 1929 shall, unless sooner revoked under the provisions of this Act expire at the end of seven years from the date of the issuance of same but may be renewed by the Public Service Commission with or without hearing, in their discretion.

Section 29

If any portion and/or section of this Act should be held unconstitutional or inoperative by any court, the remaining portions and/or Sections shall not be invalidated thereby, but shall remain and continue in full force and effect.

Section 30

Motor Carriers who conduct solely an interstate business on or over the highways of this State, shall register with the Commission the routes over which they operate, the number of motor vehicles and trailers operated by them and the character and capacity of such vehicles, the forms for such registration to be prescribed by the Commission; and such motor carriers shall give the bond or indemnity insurance prescribed by Section 7, of this Act, but limited to the protection of the public against injuries caused by the negligence of motor carriers; and such motor carriers shall pay annually the license fee prescribed by Section 18, of this Act, for each motor vehicle operated by it over the highways of this State, and each motor carrier who is not a resident of this State shall appoint an attorney in fact and file such appointment with the Commission, on whom process may be served in any suit instituted against such motor carrier in this State, for injuries to any person or property in this State; which suit shall be instituted in the county in which the injury occurs and if the said attorney in fact does not reside in such county then he may be served with a second original in the county in which he resides.

Section 31

Any motor carrier who operates on the highways of this State without a Certificate of Public Convenience and Necessity, or after such certificate is cancelled, may be enjoined by the courts of this State from operating on the highways of this State at the suit of the Commission, or at the suit of a

motor carrier or rail carrier which competes with it, or any individual.

Section 32

Be it enacted that the Act of the General Assembly approved August 29th, 1929, designate and allow to be cited as "Motor Carrier Act of 1929" by Section 1 of said Act be and the same is hereby repealed, except that all persons who have violated said Act or the rules of the Commission passed in pursuance thereof prior to its repeal, shall be subject to the penalties thereof; and all rates, fares and charges, schedules prescribed thereunder shall remain in effect until changed by the Commission and all license taxes due and unpaid thereunder shall be paid; and the repeal hereby of said Act shall not affect any bond or indemnity insurance given under Section 5 of said Motor Carrier Act of 1929.

Section 33

All laws or parts of laws which may be in conflict with this Act be and the same are hereby repealed.

Approved March 31, 1931.

25

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MAR 27 1935

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

NO. 586

AERO MAYFLOWER TRANSIT COMPANY,

APPELLANT,

versus

GEORGIA PUBLIC SERVICE COMMISSION ET AL.

APPELLEES.

REPLY BRIEF OF APPELLANT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

NO. 586

AERO MAYFLOWER TRANSIT COMPANY, APPELLANT,

versus

GEORGIA PUBLIC SERVICE COMMISSION ET AL. APPELLEES.

REPLY BRIEF OF APPELLANT

THE STATUTE INVOLVED

When this suit was filed the Motor Carrier Act approved March 31, 1931, (Our brief 17, 18, R. 14, 15, 32) section one, in defining the carriers included used the words, "whether or not common carriers." The Motor Common Carrier Act approved August 27, 1931, (R. 33 Acts 1931, 199-213) was at first claimed by Appellees to "be applicable to plaintiff" (R. 2, end page). The two Acts being related were copied as Exhibits to the original petition, the Motor Carrier Act as A (R. 13 ff.) and the Common Carrier Act as B (R. 33, ff.).

The Supreme Court of Georgia in this case definitely held that the Motor Common Carrier Act was inapplicable to Appellant (R. 48, 49), and later when the Act was codified "common carriers" were excluded. Therefore, the statute involved here is the Motor Carrier Act limited to contract carriers. (See Appendix to our original brief herein, pp. 17 ff.).

THE STATUTE CODIFIED

The Georgia Legislature in 1933 adopted the Code of 1933 but it was not printed nor effective until proclaimed by the Governor and adopted by the Legislature, February 14, 1935, after our original brief herein was filed. (See Act, February 14, 1935, Appendix 1 hereto). In this Code the Act here involved has been changed in some respects. (For details of such changes see Appendix 2.)

CONSTRUCTION OF ACT

Except the conclusion that the Act involved was limited to contract carriers and that the Motor Common Carrier Act has no application to Appellant's business, there has been no judicial interpretation or construction of the statute here under attack. There is room for difference of opinion as to the application of the sections relating to Public Convenience and Necessity (Act, Sections 4, 5, 6, 7, 17, 27, 28, and 31). Sections 8, 9, 10, 12, 14 and 19 do not apply to interstate common carriers (See Sec. 30, R. 46, Code 68-633) but no such exclusion is in the Motor Carrier Act (R. 28, Code 68-525). The criminal provisions, Section 20, the safety regulations, Section 24, and the hours of service, Section 25, are not limited to interstate operators. Possibly all sections except Section 12 as changed by the Code of 1933 apply to Appellant but certainly none is binding on the classes exempted by Section 2. Appellant complied with the law except as to the tax (R. 3), the rate provisions, and a certificate of Public Convenience and Necessity as to which compliance has not been demanded by the Commission. Since this appeal the Commission has changed its regulations and no longer requires interstate carriers to state their routes of travel as provided in paragraph c of Section 5, but still insists on collecting the tax and on all other provisions except as just stated. These unequal requirements evidence an intention to burden Appellant and interstate commerce and show the arbitrary character of the Act as a whole.

REPLY TO APPELLEES' BRIEF

PLEADINGS

It is contended by Appellees, their brief, page 9, that the definition of "Agricultural products" was not pleaded. The statute is copied, the statute including the fee required by Section 18 is claimed to be void on this and other grounds and the exemption of "agricultural products" alleged (R. 9). As the statute defined "agricultural products" it was not necessary to restate that definition. The case was decided on general demurrer with no ruling on the special demurrers (R. 47). The facts as to exemptions and burdens being pleaded, the statute copied, and the prayer being for an adjudication that

the whole statute was void (R. 13), the general demurrer should have been overruled. The prayer, in part, reads:

> "4. That the entire Motor Carrier Act of 1931, set out as Exhibit A to the petition, be held to be unconstitutional, null and void because of the exemptions therein;" (R. 13).

DECISIONS OF THIS COURT

We shall herein make brief reference to relevant cases, some of which were relied on by Appellees and not discussed in our original brief.

PACKARD v. BANTON, 264 U. S. 140

In this case a classification distinguishing as to safety regulations between uses for private purposes and as a business, and between large and small cities was sustained. This Court, in an opinion announced by Mr. Justice Sutherland, showed (pp. 143, 144) substantial and valid reasons for the classification. In the instant case both the regulated and the exempted classes use the highways "for the purposes of gain," and the only basis for the classification giving an advantage to the exempted class is the ownership of the commodities transported.

BUCK v. KUYKENDALL, 267 U. S. 307

Mr. Justice Brandeis, delivering the opinion of the Court holding the statute there involved to be repugnant to the Federal Constitution, described it as determining

> "not the manner of use but the persons by whom the highways may be used" (P. 315).

In the case now for decision the manner of the use by the exempted class is not different from the use by Appellant and the exempted class has opportunity for a greater use than is possible to an interstate carrier. The distinction here is as between persons engaged in exactly similar businesses and in the same manner, one hauling for one class and the other for another. The title of the commodity, not the manner of the use of the highways, is made the test of whether or not there shall be regulation and taxation. This is, as said in the opinion of thisCourt,

> "regulation not of the use * * * but of interstate commerce" (p. 316).

QUAKER CITY CAB CO. v. PENNSYLVANIA, 277 U. S. 389

A taxing statute was attacked in the case cited as denying the equal protection of the laws and in an opinion delivered by Mr. Justice Butler the claimed basis for the discriminatory classification was stated:

> "The character of the owner is the sole fact on which the distinction and discrimination are made to depend." (P. 402).

If "owner of the commodity" be substituted for "owner" in the above quotation the essential basis of Appellant's case will be described. Ownership of carrier was there held not "based on a real and substantial difference" and the same can be said of ownership of commodity.

CARLEY & HAMILTON v. SNOOK, 281 U. S. 66

This case is relied on by Appellees but it should be remembered that it concerned only intrastate commerce (p. 71.) Mr. Justice Stone who delivered the opinion of the Court was careful to note that cases under the Commerce Clause of the Constitution require courts to "ascertain whether a forbidden burden is imposed on interstate commerce" and "may inquire whether the tax bears some reasonable relation to the use of the State facilities." The rule in the *Quaker City Cab Case* above was stated and many similar decisions citied (p. 71), but the intrastate application of the statute there involved made inapplicable this general rule on which we rely here where Appellant is engaged solely in interstate commerce.

BEKINS VAN LINES v. RILEY, 280 U. S. 80

This case is relied on by Appellees. In this case a different and claimed discriminatory method of taxing intrastate haulers was attacked. There Mr. Justice McReynolds delivered the opinion of the Court, pointed out the "marked distinction" between common and private carriers which justified "placing common carriers * * * in a special class" and said that probably a "regular and frequent" use "will expose the public to dangers exceeding those consequent upon the occasional movements of other carriers." (P. 82). This obvious distinction made by the learned Justice does not exist

here, where neither the exempted owner nor Appellant is a common carrier. Here the use of the highway by Appellant is more "occasional" and therefore under the rule quoted above less destructive than the use made by some of the excepted class.

ALWARD v. JOHNSON, 282 U. S. 506

Here the conclusion follows the case next above and as in that case the opinion was delivered by Mr. Justice McReynolds who stated the fact that there was no "interference with interstate commerce" (P. 513).

SPROLES v. BINFORD, 286 U. S. 374

The exemptions from the weight law involved in this case relied on by Appellees was as stated by the State Court and referred to by Mr. Chief Justice Hughes who delivered the opinion, applicable:

> "only to farm machinery and not trucks used as an incident to the business of farming" (P. 392).

As the statute was thus construed the Chief Justice said that

> "the movement (of exempted vehicles) would be relatively temporary and infrequent." (P. 392).

Later in the opinion it was pointed out that the statute was not "a denial of the use of the highways to one class of citizens as opposed to another" (P. 394). Here there is a denial of equal protection because a numerous "class of citizens" may hire motor carriers to haul their products and such carriers are exempt from the regulations and taxes here under attack although Appellant hired by another "class of citizens" owning the same kinds of commodities transported in the same way is denied the exemptions. The carrying capacity of Appellant's cars is less for all its trucks than 10,000 pounds (R. 2).

STEPHENSON v. BINFORD, 287 U. S. 251

The claim of discrimination in this case was denied and Mr. Justice Sutherland delivering the opinion of the Court found that as the statute was construed and applied there was "no ground upon which to base a complaint" of discrimination (p. 278).

This case is citied by Appellees in support of the claim, not by us contested, that states may regulate for the safety of the public, truck haulers in interstate commerce. The general rule was stated by Mr. Justice Brandeis (pp. 95, 96) but (p. 97) he said:

> "Nor is there any suggestion that the classification operates to favor intrastate over interstate carriers."

In the case now before the Court there is not only suggestions but facts showing a preference to intrastate operators. (See p. 13 of petition, record pp. 6, 7). The facts here also show a purpose to burden all interstate and intrastate haulers who serve others than the exempted class of shippers.

As illustrative of this contention, we may, we think, properly refer to an unprinted but official record in the office of the Public Service Commission of Georgia. That was a report made January 1st, 1933, for the purpose of getting the facts with reference to the different classes of motor vehicles. A survey was made at twenty-five strategic points, these points being selected by the Commission as representative of the different kinds of motor vehicles operating in the State. The report is extensive, but among other things sets out the number

"Private Motor Trucks.....12293" and
"Motor Trucks for Hire..... 449"

This test does not indicate that compensation for use of the highways was the legislative purpose. Not only are private motor trucks unregulated under the statute here attacked but trucks hired by a class are exempted.

In *Connally v. Union Sewer Pipe Co.*, 184 U. S. 540 there were exemptions similar to those here and what was said in describing them applies here. The Court (p. 564) said:

> "two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicines, are, under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves

or others in the sale of their goods or merchandise; but their neighbors, who happen to be agriculturists and live-stock raisers, may make combinations of that character in reference to their grain or live stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws?"

In the *Connally Case* there was stated the rule which applied here will annul the whole of the statute under attack. The rule (p. 565) is:

> "the act, if it stands, will apply to agriculturists and live-stock dealers. Those classes would in that way be reached and fined, when, evidently, the legislature intended that they should not be regarded as offending against the law even if they did combine their capital, skill, or acts in respect of their products or stock in hand. Looking, then, at all the sections together, we must hold that the legislature would not have entered upon or continued the policy indicated by the statute unless agriculturists and live-stock dealers were excluded from its operation, and thereby protected from prosecution. The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional as denying the equal protections of the laws * * *"

CONCLUSION

There is here presented a complete scheme of regulation and a tax substantial in amount, from which there are more extensive exemptions than those which heretofore have been held to produce a denial of the equal protection of the law, and a burden on interstate commerce.

The claimed reason for the tax is to cover the cost of policing and to compensate for the use of the State's highways. Yet those who use the highways more regularly and more extensively than Appellant, are exempted. Others hauling as a regular business the same commodity as Appellant are free, while Appellant is bound. This, where there is only one difference, the ownership of the property. The weight limitation of the exempted class is not a difference as Appellant uses no

truck that has a rated capacity in excess of 10,000 pounds (R. 2, par. 5 petition). Hauling A's property as a business and being paid therefor, the business is unregulated and, as to the tax here, untaxed; hauling the same commodity for B over the same highway for a similar payment, in a similar truck, the business is taxed and regulated. If this be permissible, does the equal protection and commerce clauses have any meaning?

Respectfully Submitted,

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APPENDIX 1

An Act

"To adopt and make of force the Code of Laws of the State of Georgia known as the Code of Georgia of 1933, as approved by the Code Commission appointed pursuant to a joint resolution approved August 27, 1929, and as provided for by an Act approved March 24, 1933, and as made effective by proclamation of the Governor as of and upon January 1, 1935; and for other purposes.

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

"Section 1. That the Code of Laws of the State of Georgia which was prepared under the direction of the Code Commission created by joint resolution approved August 27, 1929, and composed of Honorable S. Price Gilbert, Associate Justice of the Supreme Court, Honorable Nash R. Broyles, Chief Judge of the Court of Appeals, Honorable George W. Stevens, Reporter of the Supreme Court, the Speaker of the House of Representatives and the President of the Senate, and which was approved by said Commission after it was so prepared, and which was published and became effective January 1, 1935, by proclamation of the Governor, entered pursuant to the Act approved March 24, 1933, and which is known and described as the Code of Georgia of 1933, *be and the same is hereby adopted and made of force as the Code of Georgia, having the force and effect of statutes enacted by the General Assembly of this State,* Said Code shall be known as the Code of Georgia of 1933.

"Section 2. *That all laws and parts of laws in conflict with this Act, except those enacted since January 1, 1935, be and the same are hereby repealed.*"

Approved:

(Signed) *EUGENE TALMADGE*

Governor

This 14 day of Feb. 1935

APPENDIX 2

Title 68 of this Code includes all regulations relating to motor carriers, and Chapters 5 and 7 of this title relate to motor contract carriers. The crime sections affecting all motor carriers are in Chapter 9 of this title.

For convenience of the Court we give the sections of that Code, relating them to the Act and stating such differences as exist. We refer to the Act as printed in our brief, giving the pages where a particular section may be found.

Act	Code Sections	Changes, if any
SECTIONS		
Title, p. 17	Omitted	
Sec. 1, p. 18	68–501	With common carrier omitted.
Sec. 2, p. 18	68–502	Excepts "common carrier."
Sec. 3, p. 20	68–503	Excepts "common carrier."
Sec. 4, p. 20	68–504	Omitting paragraph c and adding paragraph g making 7 years the life of a "certificate." See Sec. 28 of Act.
Sec. 5, p. 22	68–505	Omitting paragraph d.
Sec. 6, p. 22	68–507	
Sec. 7, p. 23	68–509	
Sec. 8, p. 23	68–510	Omits some words but meaning not changed.
Sec. 9, p. 24	68–511	For penalty, see 68–9900.
Sec. 10, p. 24	68–512	
Sec. 11, p. 24	68–513	
Sec. 12, p. 25	68–617	Limited to common carriers.
Sec. 13, p. 25	68–514	
Sec. 14, p. 25	68–515	
Sec. 15, p. 26	68–516	
Sec. 16, p. 26	68–517	
Sec. 17, p. 26	68–516	
Sec. 18, p. 26	68–518	
Sec. 19, p. 27	68–519	
Sec. 20, p. 28	68–9909, 9910 and 9913, criminal	

Act	Code Sections	Changes, if any
Sec. 21, p. 28	68–520	
Sec. 22 and 23, p. 29	Omitted	
Sec. 24, p. 29	68–521	
Sec. 25, p. 30	68–522	
Sec. 26, p. 30	68–523	
Sec. 27, p. 30	68–630	
Sec. 28, p. 30	68–524	Paragraph g, Sec. 68–504 taken from this Section.
Sec. 29, p. 31	Omitted	
Sec. 30, p. 31	68–525	
Sec. 31, p. 31	68–526	
Sec. 32, 33, p. 31 and 32	Omitted and 68–527 added	Making chapter cumulative.

HISTORY OF LEGISLATION

The legislative journals and Acts show that after the Act of March 31, 1931, applicable both to common and contract carriers and here involved was passed and at a subsequent session of the legislature there were introduced two bills. One of these was made applicable to contract carriers only; the other, Exhibit B to the petition herein (R. 33 ff.) applied to common carriers only.

The first of these bills failed of passage, the second became the Act of August 27, 1931.

The failure to pass the contract carrier bill in August, 1931, left the original and confused Act of March 31, 1931, as the law applicable to contract carriers.

FILE COPY

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CHARLES ELMORE CROP

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 586

AERO MAYFLOWER TRANSIT COMPANY,
Appellant,

VERSUS

GEORGIA PUBLIC SERVICE COMMISSION, ET AL.,
Appellees.

BRIEF FOR APPELLEES

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IN THE

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OCTOBER TERM, 1934

No. 586

AERO MAYFLOWER TRANSIT COMPANY,
Appellant,

VERSUS

GEORGIA PUBLIC SERVICE COMMISSION, ET AL.,
Appellees.

BRIEF FOR APPELLEES

STATEMENT OF CASE

This is an appeal from the Supreme Court of Georgia.

Appellant, a contract carrier engaged in interstate commerce and operating motor trucks into and through the State of Georgia, brought suit to enjoin the enforcement of the Georgia Motor Carriers Act of March, 1931. The trial court sustained a general demurrer to the petition, and this judgment was affirmed by the Supreme Court of Georgia.

The record presents two questions:

First. It is contended by appellant that the Georgia statute is violative of the commerce clause of the Federal Constitution because the license fees required by that statute are burdensome upon interstate commerce and especially as applied to the appellant's business, because the license fee is substantial in amount and is not adjusted to the use made of the public highways of the State.

Second. That the Georgia statute is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States because of certain exemptions provided by the statute.

ARGUMENT

I

The decision of the Supreme Court of Georgia is reported in 176 S. E. at page 487, Advance Sheets for November 22, 1934. It is also set forth in the record in this case (R. 48). The Georgia Motor Carriers Act of 1931 (Georgia Laws, Ex. Ses. 1931, p. 99), (R. 14) prescribes regulations for the operation of motor carriers for hire and motor common carriers for hire. This Act is codified as Chapter 68-5 of the Code of Georgia of 1933, which became effective January 1, 1935, by executive proclamation.

By an Act approved August 27, 1931, enacted at the regular session of that year, the General Assembly provided for the regulation of motor common carriers (Georgia Laws 1931, p. 199), (R. 33, 47). This Act expressly repealed the Act of the extraordinary session

of 1931 in so far as it related to motor common carriers. The Motor Common Carriers Act of August, 1931, is codified as Chapter 68-6 of the Code of Georgia of 1933. Chapter 68-5 of the Code of Georgia of 1933 relates only to motor contract carriers, and Chapter 68-6 relates only to motor common carriers.

In its opinion of September 15, 1934, the Supreme Court of Georgia held that the Motor Common Carriers Act approved August 27, 1931, has reference to motor common carriers only and is not applicable to the business of the appellant, since the petition shows that the appellant is not a common carrier.

This decision by the Supreme Court of Georgia as to the meaning of the Georgia statute is binding.

Hartford Accident Co. v. Nelson,
291 U. S. 352;

Knights of Pythias v. Meyer,
265 U. S. 30, 32;

Great Northern Ry. Co. v. Sunburst Co.,
287 U. S. 358, 362;

Guaranty Trust Co. v. Blodgett,
287 U. S. 509, 513.

There is no complaint in the instant case that the Georgia statute is invalid because it requires the appellant, a contract carrier, to assume the burdens of a common carrier, and no such question is presented.

II

In its opinion of September 15, 1934, the Supreme

Court of Georgia held that the Georgia statute under attack provides a charge

> "not as a privilege tax for carrying on interstate business, but for the use of the public highways of the State, and, properly construed, manifests a legislative intent and expressly allocates the fees of $25.00 for each motor vehicle therein provided for (a) to the cost of administration and enforcing the provisions of the Act and (b) the cost of building, maintenance, and repair of the highways of the State."

See also in this connection

> McKinney v. Patton,
> 176 Ga. 719.

These cases are conclusive that the Georgia statute is not a revenue measure, but was enacted under the police power of the State, and that its purpose was to insure public safety and to regulate the burden upon the highways of the State resulting from their use for the transportation of freight and passengers by persons making the public highways their place of business.

> Stephenson v. Binford,
> 287 U. S. 251;
>
> Bradley v. Public Utilities Commission,
> 289 U. S. 92.

> "It was competent for the State in exercising its control over the use of the highways to make reasonable regulations governing that use by private contract carriers. These regulations may require on the part of interstate as well as intrastate car-

riers the payment of reasonable license fees and the filing of insurance policies to protect the interests of the public by securing compensation for injuries to third persons and their property from the negligent operations of such carriers."

Hicklin v. Coney,
290 U. S. 169;

Continental Packing Co. v. Woodring,
286 U. S. 352;

Stephenson v. Binford,
287 U. S. 251.

See also

Hendrick v. Maryland,
235 U. S. 610;

Kane v. New Jersey,
242 U. S. 160;

Sprout v. South Bend,
277 U. S. 163;

Clark v. Poor,
274 U. S. 554;

Aero Mayflower Transit Co. v. Ga. Public Service Comm.,
176 S. E. 487.

Even if expressly laid as a tax the flat fee of $25.00 per truck required to be paid by the Georgia statute could not be defeated by reason of the interstate character of the appellant's business because, even if such a

tax constituted a direct burden on interstate commerce, it affirmatively appears that it is levied only as compensation for use of the highways and to defray the expense of regulating motor traffic. This is indicated by the express allocation of the fees collected to the enforcement of the regulatory features of the law and to highway purposes.

Clark v. Poor,
274 U. S. 554;

Interstate Transit, Inc., v. Lindsey,
283 U. S. 183.

The contention that the Georgia statute imposes a direct and unreasonable burden on interstate commerce because the license fee required to be paid is a flat annual sum of $25.00 per vehicle and has no reasonable relation to the cost of inspecting, controlling or supervising the interstate business conducted by the appellant, is without merit.

The decision by the Supreme Court of Georgia in this case directly holds that the small fee of $25.00 for each truck is a reasonable charge for the use of the highways for the period specified in the Act. There is no averment in the petition, other than the bald assertion that the fee is unreasonable, tending to show that such is not the fact.

Users of the public highways of a State in interstate commerce may be required to contribute to their cost and upkeep. Carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use.

Hendrick v. Maryland,
235 U. S. 16;

Kane v. New Jersey,
242 U. S. 160.

There is no allegation that the license fee or tax discriminates against interstate commerce. It is required of all carriers, whether operating in interstate commerce or intrastate commerce.

In

American Transit Co. v. City of Philadelphia,
18 Fed. (2) 991,

the District Court for the Eastern District of Pennsylvania had under consideration an ordinance of the City of Philadelphia imposing an annual flat license fee of $50.00 upon motor busses using the streets of the city in carrying passengers for hire. In its opinion the District Court said:

> "There is nothing in the ordinance before us which applies to interstate commerce, except incidentally. The ordinance applies to all motor busses for hire operating within the city limits. It is conclusively shown by the evidence that the fee of $50.00 is not in the nature of a privilege tax, but is only sufficient to defray the expenses of the administration of the ordinance."

In the instant case the averments of the petition show that substantially all of the license fees collected are expended in the enforcement of the statute. Whatever surplus may remain, however, is expressly allocated to the construction and maintenance of public highways.

In the case last cited the license fee was $50.00 for each vehicle and was imposed by a municipality. It was held to be reasonable, although applying to interstate carriers without reference to their use of the privilege granted. Certainly the license fee imposed by the Georgia statute cannot be said to be unreasonable in amount.

III

Appellant contends that the Georgia statute is violative of the equal protection clause of the Fourteenth Amendment because of certain exemptions. In the statement of the points upon which appellant intends to rely (R. 66) it is set forth that the attack is based upon the following specified exemptions:

(a) Hauls between points not having railroad facilities

(b) Hauls of agricultural or dairy products

(c) The definition of agricultural products exempted in the Act

(d) Hauls by producers and

(e) Merchants in rural districts.

The original petition attacked the statute as violative of the Fourteenth Amendment only on account of the exemption set forth by Paragraph 15 of the original petition (R. 9) as follows:

> "Motor vehicles engaged solely in transporting school children and teachers to and from public schools. And cars and trucks hauling people and farm products exclusively between points not hav-

ing railroad facilities and not passing through or beyond points having railroad facilities, where not more than seven passengers and/or 1½ tons of freight are transported";

and

"Motor vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer."

The original petition made no attack upon the statute as violative of the Fourteenth Amendment because of the language defining agricultural products as including "all country merchants in rural districts who handle poultry and farm products in pursuance to their own business, and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer." The phrase just quoted is a part of sub-division 2 of Section 2 of the Act of March, 1931 (Georgia Laws, 1931, Ex. Ses., pp. 99, 101. Code of Georgia of 1933, Sec. 68-502, R. 16), which is as follows:

"(2) Motor-vehicles engaged exclusively in the transportation of agricultural and/or dairy products between any of the following points: farm, market, gin, warehouse, or mill, where the weight of the load does not exceed 10,000 pounds, whether such motor-vehicle is owned by the owner or producer of such agricultural or dairy products or not, so long as the title remains in the producer. And the word 'producer' shall include a landlord where

> the relations of landlord and tenant or landlord and cropper are involved. The phrase 'agricultural products' as used in this Act shall include fruit, live stock, meats, fertilizer, wood, lumber, cotton, and naval stores, household goods and supplies transported to farms for farm purposes, and/or other usual farm and dairy supplies, and including products of grove and/or orchard, and also poultry and eggs, and also fish and oysters, and all country merchants in rural districts who handle poultry and farm products in pursuance to their own business, and not for hire, and timber and/or logs being hauled by the owner thereof, or his agents and/or employees between forest and mill or primary place of manufacturer."

The appellant makes no point upon the exemption in favor of motor vehicles engaged exclusively in transporting school children and teachers to and from public schools.

It is not shown by the petition that the exemption in favor of vehicles engaged in hauling people and farm products exclusively between points not having railroad facilities, and not passing through or beyond points having railroad facilities actually operates to relieve any carrier for hire.

It is at once apparent that this exemption must necessarily apply to a very limited class of operations. In

> Continental Baking Company v. Woodring,
> 286 U. S. 352,

the Kansas statute was attacked upon a similar ground, and in particular because of an exemption in favor of "motor carriers who shall operate wholly within any city or village of this State, or private motor carriers

who operate within a radius of twenty-five miles beyond the corporate limits of such city, or any village." In that case the Court held that the Legislature in setting up a twenty-five mile zone beyond the limits of municipalities unquestionably had a broad discretion as to where the line should be drawn, and that:

> "In exercising that discretion, the Legislature was not bound to resort to close distinctions or to attempt to define the particular differentiations as to traffic conditions in the territory bordering on its various municipalities. Ohio Oil Co. vs. Conway, 281 U. S. 146-159. This Court has frequently held that the mere selection of a mileage basis in the regulation of railroads cannot be considered a violation of the Federal statute. The practical convenience of such a classification is not to be disregarded in the interest of a purely theoretical or scientific uniformity."

The exemption now under consideration is no broader than the exemption provided by the Kansas Act which was upheld in

> Continental Baking Company v. Woodring, *Supra.*

The Georgia Legislature, in the enactment of this statute, could properly take into consideration the fact that the business of operating for hire exclusively between points wholly without railroad facilities is necessarily so limited in its scope and so unattractive to a commercial hauler as to leave such localities entirely without service if the payment of regulatory fees should be required. It would be difficult, if not impossible, to find a section of Georgia which meets the requirements

of this exemption. This is true because the haul must not only originate in a town having no railroad facilities and terminate in a town having no railroad facilities, but it must not pass through any town which does have railroad facilities.

On this point, the case is controlled by the decision in

> Continental Baking Company v. Woodring,
> *Supra.*

IV

The second ground upon which it is contended that the statute violates the Fourteenth Amendment has reference to the exemption in favor of vehicles engaged exclusively in the transportation of agricultural products.

Appellant relies upon

> Smith v. Cahoon,
> 283 U. S. 553,

where this Court held the Florida Motor Vehicle statute invalid because of the following exemption:

> "Any transportation company engaged exclusively in the transporting agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point enroute to primary market or to motor vehicles used exclusively in transporting or delivering dairy products."

In that case the Court recognized the principle that the State has a broad discretion in classification in the exercise of its power of regulation, citing

Central Lumber Company v. South Dakota,
226 U. S. 157;

Miller v. Wilson,
236 U. S. 373, 382;

Bekins Van Line v. Riley,
280 U. S. 80, 82;

Silver v. Silver,
280 U. S. 117, 123;

Corley and Hamilton v. Snook,
281 U. S. 66, 73.

The distinction between the Florida law and the Georgia statute now under consideration is apparent. The Florida act contained a broad exemption in favor of transportation companies engaged in transporting agricultural products for hire from the point of production to the assembling or shipping point enroute to primary market, and a broad exemption in favor of motor vehicles engaged exclusively in transporting or delivering dairy products, without reference to the point of origin or the point of delivery. The Georgia statute exempts, not transportation companies, but motor vehicles engaged exclusively in the transportation of agricultural or dairy products between specific points, *and then only so long as the title remains in the producer.*

The Supreme Court of Georgia, in passing upon this question, held:

"The language 'as long as the title remains in the producer' limits the operation of the exemption referred to above to such an extent that the only property in

the class mentioned which is exempted is property where 'the title remains in the producer.' This is a reasonable classification in favor of the producer, which will enable movements of the products over the highways so long as the title remains in him without exaction of the prescribed fee. The statute involved in Smith v. Cahoon, 283 U. S. 553, did not contain any such words of limitation as referred to above, and the cases are distinguishable." (R. 60.)

The exemption allowed by the Georgia statute is so hedged about with limitations and restrictions as to afford no substantial privilege to anyone. In order to meet the requirements of the exemption, the particular motor vehicle, as distinguished from the transportation company in the Florida case, must be engaged exclusively in the transportation of agricultural products belonging to the producer between the points mentioned by the Act. If the vehicle is used for any other transportation it is subject to the payment of the license fee. Under the Florida statute the vehicle might be used for any number of purposes, and still be exempt from the payment of the license fees if operated by a transportation company engaged exclusively in hauling agricultural products.

Under the Florida Act the ownership of the agricultural product at the time of the transportation is immaterial. Under the Georgia Act the exemption applies only so long as the title to the agricultural product remains in the producer. Thus, a carrier may transport agricultural products in Georgia without complying with the law only so long as the product belongs to the producer, and the title remains in him, and only so long as it is conveyed in a vehicle used for no other purpose. Under the Florida law, any company engaged exclusively in that busi-

ness may transport agricultural products between the points specified without complying with the law, regardless of the ownership of the product or any other use to which the vehicle may be put.

Under the Florida statute there is no restriction as to the weight of the exempted load. The Georgia statute restricts the weight of the exempted load to 10,000 pounds.

The Florida statute permits the transportation of dairy products between all points by vehicles used exclusively for that purpose. The Georgia statute permits the transportation of dairy products only so long as the title remains in the producer, and only between the points named in the Act, and only where the weight of the load does not exceed 10,000 pounds.

The exemption afforded by the Georgia statute must necessarily apply to a very limited class of transportation. It falls within the rule announced in

> Hicklin v. Coney,
> 290 U. S. 169, 177,

where the Court, in dealing with the South Carolina Motor Vehicle Law, held:

> "The exemption in favor of those hauling lumber and logs 'from the forest to the shipping points' relates to a limited class of transportation simply to places of shipment and does not appear to be unreasonable."

See also

> Sproles v. Binford,
> 286 U. S. 374.

In

Continental Baking Company v. Woodring,
Supra,

the Kansas statute under review regulated all motor carriers, including private carriers engaged in transporting their own property. It was attacked because of an alleged discrimination in favor of agricultural products, the statute providing that it should not apply to

> "the transportation of live stock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle."

The Court said:

> "The Court found a practical difference between the case of the appellants 'who operate fleets of trucks in the conduct of their business and who use the highways daily in the delivery of their products to their customers,' and that of 'a farmer who hauls his wheat or live stock to town once or twice a year.' The Legislature in making its classification was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which by reason of their habitual and constant use of the highways brought about conditions making regulation imperative and created the necessity for the imposition of a tax for maintenance and reconstruction. As the Court said in Alward v. Johnson, 282 U. S. 509, 513: 'The distinction between property employed in conducting a business which requires constant and unusual use of the highways, and property not so employed, is plain enough.'"

The General Assembly of Georgia, in the enactment of the statute under review, knew and must have con-

sidered that the use of the highways for the transportation of farm products while owned by the producer is infrequent and mostly upon rural public roads not embraced within the State Aid System of highways. It must have concluded that the rare instances in which a farmer might employ his neighboring farmer to haul a bale of cotton to the gin, or some other agricultural product to some other point enumerated, would be so rare that it would impose no burden of consequence upon the public highways. As a matter of fact, Georgia has a vast mileage of public roads. Less than ten per cent. of this mileage is improved by hard surfacing, and embraced within the State Aid System of public highways. The remaining more than ninety per cent. of unimproved lateral roads constitutes the system of public roads which the farmer uses to convey his own farm products to market.

The exemption dealt with in Continental Baking Company v. Woodring, *Supra,* was of the same character as the exemption here under consideration. Certainly, the Georgia exemption is no broader than the Kansas exemption because the Kansas statute not only exempted farm products, but all other supplies which the farmer might transport to his farm.

In Nance v. Harrison, 176 Ga. 674, the Supreme Court of Georgia upheld the Georgia mileage tax act as against an attack based upon the identical point here made. The mileage tax act contains an exemption almost identical with that in the Motor Carriers Act in favor of agricultural products.

V

While no attack was made upon the Georgia statute

in the petition of the appellant on account of the classification of rural merchants (R. 9), the statement of points upon which appellant intends to rely (R. 66) sets forth that the law is attacked as unconstitutional because of the classification of merchants in rural districts. A reference to the statute (R. 16) will at once show that this complaint is without any sort of merit. In defining agricultural products the statute makes the definition include "all country merchants in rural districts who handle poultry and farm products in pursuance to their own business *and not for hire.*" The statute undertakes to regulate only *carriers for hire.* Accordingly, the exemption in favor of country merchants means nothing, because country merchants handling poultry and farm products "in pursuance to their own business *and not for hire*" are not subject to the regulations of the Act under its express language.

VI

In conclusion, we desire to say that the attack upon the Georgia statute as violative of the equal protection clause of the Fourteenth Amendment is not based upon any alleged facts which could authorize a finding that the exemptions complained of amount to anything more than mere gestures. The petition does not allege that there is any carrier for hire who is relieved of the burdens imposed by the statute by reason of the exemptions. The exemptions themselves are so restricted that they cannot possibly have application to any considerable portion of the commercial traffic moving over the highways of the State.

Appellant is entitled to relief against the statute

alleged to be unconstitutional only if the statute as applied discriminates injuriously against it.

Albany Co. v. Stanley,
105 U. S. 305, 314;

First National Bank of Shreveport v. Louisiana Tax Commission,
289 U. S. 60.

Furthermore, the failure of appellant to allege that the exemption complained of actually operates to relieve any carriers for hire of the burdens imposed by the statute necessarily points to the conclusion that the exemptions can only cover extremely limited operations.

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